



**(1) THE KENT COUNTY COUNCIL**

**-and-**

**(2) KeyIVR**

**CONTRACT**

relating to the supply of

**IVR Payment System**

**Contract Number: SC220269**

## FORM OF AGREEMENT

**THIS CONTRACT** is made on

### **BETWEEN**

- (1) **THE KENT COUNTY COUNCIL** of County Hall, Maidstone, ME14 1XQ (the “Council”);  
and
- (2) **KEYIVR** (company registered number 06512297) whose registered office is at 8 Durham Lane, West Moor Park, Armthorpe, Doncaster, DN3 3FE (the “Supplier”).

### **RECITALS:**

- (A) The Council a local authority as defined by section 270 of the Local Government Act 1972.
- (B) Following a procurement process the Council has appointed the Supplier to provide the Services in accordance with this Contract.

### **IT IS AGREED:**

- 1. this Contract is comprised of the following documents:

- 1.1 This Form of Agreement;
- 1.2 The Contract Particulars;
- 1.3 The Schedules
- 1.4 The Terms and Conditions

and (unless otherwise expressly stated) any inconsistency between them shall be resolved in accordance with the descending order of priority in which they are listed above.

- 2. Terms and Conditions
- 3. In consideration for payment of the Contract Price, the Supplier undertakes to perform the Services with due skill, care and diligence throughout the Contract Period.

**EXECUTION UNDER HAND**

**IN WITNESS** whereof this Contract has been executed by the Parties in accordance with their respective constitutions:

Signed for and on behalf of **THE KENT COUNTY COUNCIL**



Elizabeth Amarte (Nov 23, 2022 12:20 GMT)

Authorised Signatory

Elizabeth Amarte

Print Name of Authorised Signatory

Signed for and on behalf of KeyIVR



Authorised Signatory

Mark Kelly, CCO

Print Name of Authorised Signatory

## CONTRACT PARTICULARS

1. Commencement Date: 1<sup>st</sup> December 2022
2. Contract Period: 1<sup>ST</sup> December 2022 – 30<sup>th</sup> November 2025 (3 years)
3. Contract Price: As set out in Schedule 0
4. Contract Extension: None
5. Address for Service of Notices  

For the Council:  
  
Strategic Commissioning  
Kent County Council  
Sessions House  
County Road  
Maidstone  
Kent ME14 1XQ  
  
For the Supplier:  
  
KeyIVR  
8 Durham Lane  
West Moor Park  
Armthorpe  
Doncaster  
DN3 3FE

## SPECIFICATION

The payment card industry (PCI) has data security standards (DSS) to safeguard credit card and cardholder data against breach and other forms of unauthorised access. KCC telephony payments must be PCI compliant and therefore not record the customer card details or sensitive authentication data in the recording of the call or to the advisor.

A system is required to ensure card transactions can be completed over the phone. This system must have the following requirements:

- Card details are entered via the keypad by the customer and the advisor cannot see or hear the details but can still speak to the customer via an 'agent assist' solution so the advisor can guide the customer through the transaction.
- Visible payment portal for advisor to see/hear if transaction successful.
- DTMF call masking (changes the variable keypad tones to flat tones so they cannot be identified)
- The system and network is also secure and compliant with firewall and router.
- Automated payment line without the advisor where the customer can call the line and complete a payment without advisor intervention but transferable to a live advisor (if available).
- Customisable values and call flow/script.
- Integrates with existing account and merchant provider.
- Integrates with existing ACD telephony provider.
- All major cards accepted.
- Web payments.
- Defined user support channel and available 24/7
- Concurrent or transactional licences (not named)
- One-off set up costs defined.
- Individual reporting for separate services including refunds.
- Multi-merchant account function for individual services.
- Email/text notification to customers.

**SCHEDULE 0**  
**PRICING AND PAYMENT**

## Set Up and Configuration Costs New Services

Description	Price
<b>Web Payments</b> <ul style="list-style-type: none"><li>• Available 24/7/365</li><li>• 3DS2 Security</li><li>• PCI-DSS Level 1</li><li>• Branded as Kent County Council</li><li>• Real-time reporting</li></ul>	£4,250
<b>Automated Payment Line</b> <ul style="list-style-type: none"><li>• PCI-DSS Level 1</li><li>• 24/7 availability</li><li>• Real-time reporting</li><li>• Bespoke Flow</li></ul>	£2,750
<b>API Intergration</b>	£2,550
<b>Total Price</b>	<b>£9,550</b>

# Monthly Costs

Description	Price
<b>Monthly Hosting Web &amp; Support</b> <ul style="list-style-type: none"> <li>• 24/7/365 P1 Support</li> <li>• Hosting of Web Payments</li> <li>• Help Desk Support 8:30 – 17:00 Mon – Fri</li> <li>• PCI Patching</li> <li>• Account Management</li> <li>• Real-time reporting Dashboard</li> </ul>	£295
<b>Monthly Hosting Payment IVR &amp; Support</b> <ul style="list-style-type: none"> <li>• 24/7/365 P1 Support</li> <li>• Hosting of Payment IVR</li> <li>• Help Desk Support 8:30 – 17:00 Mon – Fri</li> <li>• PCI Patching</li> <li>• Account Management</li> <li>Real-time reporting Dashboard</li> </ul>	£270
<b>Monthly Hosting &amp; Support (Existing Service)</b> <ul style="list-style-type: none"> <li>• 24/7/365 P1 Support</li> <li>• Hosting of Agent Assist (Existing service)</li> <li>• Help Desk Support 8:30 – 17:00 Mon – Fri</li> <li>• PCI Patching</li> <li>• Account Management</li> <li>Real-time reporting Dashboard</li> </ul>	£500 (Existing service)
<b>Transaction Cost All Services</b>	35p per trans
<b>Call Cost IVR &amp; Agent Assist</b>	1.5p

## SCHEDULE 1

### DATA PROTECTION AND GENERAL DATA PROTECTION REGULATION

***The Contract concerns the processing of Personal Data?***      **Yes**

**If “Yes”:** The processing of Personal Data applies to the Contract.

**If “No”:** The Processing of Personal Data does not apply to the Contract.

**If the answer given is originally “No” and the situation changes to involve the processing of Personal Data, this Schedule will apply in its entirety and need to be completed in full.**

**Whether “Yes” or “No”, Annex 1 must be completed in accordance with the guidance at Annex 1.**

**Whether “Yes” or “No”, the Supplier shall at all times comply with the Data Protection Legislation.**

#### **PARTIES**

**The Kent County Council**

KeyIVR (“Supplier”)

The Parties agree that the Contract includes this Schedule 16 - Data Protection and General Data Protection Regulation and its Annex 1.

The following new definitions shall be introduced:

**“Controller”** has the meaning given in the Data Protection Legislation;

**“Data Loss Event”** means any event that results or may result in unauthorised access to Personal Data held by the Council under this Deed, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement including any Personal Data Breach;

**“Data Protection Legislation”** means any data protection laws and regulations applicable in the United Kingdom from time to time which relates to the protection of Personal Data, including but not limited to UK GDPR, and any codes of practice, guidelines and recommendations issued by the Information Commissioner or any replacement body;

**“Data Protection Officer”** has the meaning given in the Data Protection Legislation;

**“Data Subject Access Request”** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

**“Data Subject”** has the meaning given in the Data Protection Legislation;

**“DPA”** means the Data Protection Act 2018 as amended from time to time;



**“LED”** means the Law Enforcement Directive (Directive (EU) 2016/680);

**“Personal Data”** has the meaning given in the Data Protection Legislation;

**“Protective Measures”** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

**“Processor”** has the meaning given in the Data Protection Legislation;

**“Processor Personnel”** all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any sub-contractor of the Processor;

**“Personal Data Breach”** has the meaning given in the Data Protection Legislation;

**“Sub-processor”** any third party appointed to process Personal Data on behalf of the Processor related to this agreement; and

**“UK GDPR”** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA.

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor unless otherwise specified in this Schedule 16 and Schedule 16 - Annex 1 (Processing, Personal Data and Data Subjects). The only processing that the Processor is authorised to do is listed in Annex A (Processing Personal Data) by the Controller and may not otherwise be determined by the Processor.
2. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
3. The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Schedule 16 and Schedule 16 - Annex 1 (Processing, Personal Data and Data Subjects):
  - 3.1. process that Personal Data only in accordance with Annex 1 (Processing, Personal Data and Data Subjects), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - 3.2. ensure that it has in place Protective Measures which have been reviewed and approved by the Controller as appropriate to protect against a Data Loss Event having taken account of the:
    - 3.2.1. nature of the data to be protected;
    - 3.2.2. harm that might result from a Data Loss Event;
    - 3.2.3. state of technological development; and
    - 3.2.4. cost of implementing any measures;
  - 3.3. ensure that:
    - 3.3.1. the Processor Personnel do not process Personal Data except in accordance with this Schedule 16 and (and in particular Schedule 16 - Annex 1 (Processing, Personal Data and Data Subjects));

- 3.3.2. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
  - (A) are aware of and comply with the Processor's duties under this paragraph;
  - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
  - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Schedule 16 and Schedule 16 - Annex 1 (Processing, Personal Data and Data Subjects); and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 3.4. not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - 3.4.1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - 3.4.2. the Data Subject has enforceable rights and effective legal remedies;
  - 3.4.3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - 3.4.4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- 3.5. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Deed unless the Processor is required by Law to retain the Personal Data.
- 4. Subject to paragraph 5, the Processor shall notify the Controller immediately if it:
  - 4.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 4.2. receives a request to rectify, block or erase any Personal Data;
  - 4.3. receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;

- 4.4. receives any communication from the Information Commissioner's Office or any other regulatory authority in connection with Personal Data processed under this Deed;
  - 4.5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 4.6. becomes aware of a Data Loss Event.
5. The Processor's obligation to notify under paragraph 1.4 shall include the provision of further information to the Controller in phases, as details become available.
6. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 1.4 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
  - 6.1. the Controller with full details and copies of the complaint, communication or request;
  - 6.2. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 6.3. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 6.4. assistance as requested by the Controller following any Data Loss Event;
  - 6.5. assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
7. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
8. The parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
9. Before allowing any Sub-processor to process any Personal Data related to this Deed, the Processor must:
  - 9.1. notify the Controller in writing of the intended Sub-processor and processing;
  - 9.2. obtain the written consent of the Controller;
  - 9.3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this paragraph 1.9 such that they apply to the Sub-processor; and
  - 9.4. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
10. The Processor shall remain fully liable for all acts or omissions of any Sub-processor.

11. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor require it to amend this Deed to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## ANNEX 1 TO SCHEDULE 1

### Schedule of Processing, Personal Data and Data Subjects

#### Guidance for Completion

1. If processing Personal Data, complete Annex 1 in full.
2. If the Contract does not concern the processing of Personal Data, complete Supplier and Contract details below and select “Not Applicable” for each “Detail” section of Parts A and B.

**Supplier:** KeyIVR

**Contract:** SC220269 – Payment card industry (PCI) Payment System IVR

1. The Processor shall comply with any further written instructions with respect to processing by the Controller.
2. Any such further instructions shall be incorporated into this Schedule.
3. Part A and/or Part B, as appropriate, describe the Data relationship(s) between the Parties. Only completed Part(s) apply and an uncompleted Part indicates that the Data relationship pertaining to that Part does not exist within the Contract. If the Contract concerns the processing of Personal Data at least one Part must be completed and both Parts may be completed but the latter must apply to different Data within the Contract. The same Party cannot be both a Controller and a Processor for the same Data in one contract but can be for different data within the same contract.
4. Any uncompleted Parts below should have “Details” contents deleted and replaced with “Not Applicable”.

#### PART A

**The Kent County Council**  
**KeyIVR**

Data Controller  
Data Processor

Description	Details
Subject matter of the Processing	Card payments for services received such as Blue Badges, Country Parks and Drivers Education courses.
Duration of the Processing	Regulations state that audit trail history should be retained for at least a year, with a minimum of three months logs immediately available for analysis. KEY IVR states all access to data is logged and logs are retained for a minimum of 24 month.
Nature and purposes of the Processing	Data is processed as part of a contract with the customer. The customer will receive services as a result of their payment. The

	KEY IVR element only covers the payment, KCC will collate the additional information needed outside of this system.
Type of Personal Data	Name, identification number, Card details
Categories of Data Subject	Customers
Plan for return and destruction of the Data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of Data	Data is electronic and will be purged after the data retention period has lapsed.

## THE KENT COUNTY COUNCIL

### GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

#### WHERE CONTRACT VALUE IS BELOW OJEU THRESHOLD EX VAT

#### 1 DEFINITIONS AND INTERPRETATION

##### 1.1 In this Contract:

**"Applicable Laws"** means all applicable laws, byelaws, regulations, regulatory requirements and codes of practice of any relevant jurisdiction, as amended and in force from time to time.

**"Business Day(s)"** means days when the clearing banks are open for business in London.

**Charges payable for the Goods and/or Services** shall be the prices stated in the Order.

**"Confidential Information"** means all information of a confidential nature in the disclosing party's possession or control, whether created before or after the date of the Contract, whatever its format, and whether or not marked "confidential", including the terms of the Contract, and negotiations relating to them, but shall not include any information which is or comes into the public domain through no fault of the other party, was already lawfully in the other party's possession or comes into the other party's possession without breach of any third party's confidentiality obligation to the disclosing party, or is independently developed by or on behalf of the other party.

**"Conditions"** means the terms and conditions set out in this document.

**"Contract"** means the agreement between the Council and Supplier for the purchase of Goods or Services by the Council in accordance with these Conditions and any Order.

**"Council"** means The Kent County Council of County Hall, Maidstone, Kent ME14 1XQ

**"Council Materials"** means any materials, patterns, templates, drawings, know-how, techniques and information provided by the Council to the Supplier in connection with a Contract.

**"Council Policies and Regulations"** as published on the [www.kent.gov.uk](http://www.kent.gov.uk) website from time to time means all relevant Council policies, rules, regulations, local and national byelaws, including, but not limited to the Council's whistleblowing policy, drugs and alcohol policy, modern slavery and human trafficking policy, general data protection rules, conflicts of interest, transparency, extremism and radicalisation, whistleblowing, use of Council datasets, Caldicott Principles, safeguarding children and vulnerable people, and business continuity/disaster recovery policies/procedures applicable to or as part of this Contract.

**"Council Representative"** means any representative nominated in an Order or from time to time by the Council.

**"Data"** means all Personal Data and other data collected, generated or otherwise processed by one party as a result of, or in connection with, the Contract.

**"Data Protection Laws"** means any data protection laws and regulations applicable in the United Kingdom from time to time and any codes of practice, guidelines and recommendations issued by the Information Commissioner or any replacement body.

**Employment Regulations** means the Transfer of Undertakings (Protection of Employment) Regulations 2008 and any equivalent provisions in any other relevant jurisdiction.

**"Force Majeure Event"** means an event or circumstance beyond the reasonable control of a party which is not attributable to its fault or negligence, including acts of God, expropriation or confiscation of facilities, any form of government intervention, war, hostilities, rebellion, terrorist activity, local or national emergency, strikes and other industrial action (other than strikes and other industrial action of the Supplier Personnel), sabotage or riots, and floods, fires, explosions or other catastrophes which directly prevent performance of the Contract.

**"Good Industry Practice"** means the exercise of the degree of skill, care and diligence expected from an expert and experienced supplier of goods and/or services the same as or similar to the Goods and/or Services.

**"Goods"** means the goods (including any instalment of the goods or any parts for them) which are set out in the Order.

**"Intellectual Property Rights"** means copyright, patents, rights in inventions, rights in confidential information, Know-how, trade secrets, trade marks, service marks, trade names, design rights, rights in get-up, database rights, rights in data, semi-conductor chip topography rights, mask works,

utility models, domain names, rights in computer software and all similar rights of whatever nature and, in each case: (i) whether registered or not, (ii) including any applications to protect or register such rights, (iii) including all renewals and extensions of such rights or applications, (iv) whether vested, contingent or future and (v) wherever existing.

**"Know-how"** means inventions, discoveries, improvements, processes, formulae, techniques, specifications, technical information, methods, tests, reports, component lists, manuals, instructions, drawings and information relating to customers and suppliers (whether written or in any other form and whether confidential or not).

**"Malpractice"** includes giving or receiving any financial or other advantage that may be construed as a bribe, whether for the purpose of the Bribery Act 2010 or any other Applicable Law.

**"Month/Monthly"** means a calendar month.

**"New Materials"** means any materials, patterns, templates, drawings, know-how, techniques and information that the Supplier or its Representatives create for the Council under a Contract.

**"Order"** is an order for Goods and/or Services placed with the Supplier by the Council.

**"Personal Data"** has the meaning given under the Data Protection Laws.

**"Premises"** means the premises at which any Services are carried out as specified in an Order.

**"Representatives"** means, as applicable, the Supplier or a member of the Supplier's group or the Council or any of their directors, officers, employees, agents, professional advisors, suppliers or contractors.

**"Services"** means the services described in the Order including hardware and software services, where applicable.

**"Service Levels"** if set out in the Order means the required standards with which the Goods and Services are to be supplied.

**"Supplier"** means the supplier named in the Order.

**"Supplier Materials"** means any materials, patterns, templates, drawings, know-how, techniques and information of the Supplier that the Supplier or its Representatives do not create for the Council under the Contract.

**"Supplier Personnel"** means the employees, agents, subcontractors or invitees of the Supplier from time to time.

**"VAT"** means value added tax or any similar or substituted turnover or sales tax in the United Kingdom or elsewhere.

##### 1.2 In these Conditions and any Contract:

- (a) the interpretation of general words shall not be restricted by words indicating a particular class or particular examples;
- (b) any reference to a statute or statutory provision includes a reference to any statutory amendment, consolidation or re-enactment of it to the extent in force from time to time; and
- (c) unless otherwise stated, time shall not be of the essence for the performance of any obligation.

#### 2 FORMATION OF A CONTRACT

- 2.1 An Order is an offer by the Council to purchase the Goods and/or Services subject to these Conditions. Acceptance of an Order by the Supplier constitutes unconditional acceptance of these Conditions.
- 2.2 These Conditions shall apply to every Contract.
- 2.3 If there is any conflict between the terms of an Order and these Conditions, these Conditions shall prevail.
- 2.4 The Supplier's performance of any Order will amount to its acceptance of these Conditions, regardless of whether or not it has given a formal acceptance of an Order.
- 2.5 These Conditions replace all previous agreements and any course of dealing between the Council and the Supplier and is the entire agreement between the Council and the Supplier in relation to the Goods and/or Services.
- 2.6 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions contained in or referred to in any documentation

submitted by the Supplier, or in any correspondence or elsewhere or implied by trade custom, practice or course of dealing.

### 3 CANCELLATION

The Council may cancel any Order without liability, in whole or in part, by giving written notice to the Supplier at any time prior to delivery of the Goods or the commencement of the provision of the Services.

### 4 CHARGES AND PAYMENT

#### 4.1 Unless otherwise stated:

- (a) the Charges (together with any applicable VAT) are the only amounts payable by the Council under a Contract;
- (b) the Charges shall be exclusive of any applicable VAT (which shall be payable by the Council subject to receipt of a VAT invoice);
- (c) the Charges shall be inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods or services to the delivery address specified by the Council and any duties, custom or levies, other than VAT; and
- (d) all other costs, charges and expenses which relate to the performance of the Supplier's obligations and the supply of the Goods and/or the Services shall be borne by the Supplier. The fact that a particular provision in an Order does not state that the Supplier must perform the obligations "at no additional charge" may not be taken as implying that the Supplier may charge extra for complying with the obligation.

#### 4.2 No increase in the Charges for the Goods and/or Services may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Council and signed by a properly authorised representative of the Council.

#### 4.3 The Supplier shall invoice the Council in pounds sterling (GBP/£) in arrears on or after delivery of the Goods and/or completion of the Services unless otherwise is stated in the Order.

#### 4.4 The Council shall only be obliged to make payments which:

- (a) are supported by accurate and properly prepared invoices which are VAT invoices where required;
- (b) include details of the Supplier, Goods and/or Services;
- (c) include purchase order references;
- (d) include all those details the Council states it requires for it to process the invoice; and
- (e) where the Council is satisfied that the Goods are of satisfactory quality and fit for purpose and/or the Services have been carried out to the standard required by the Council in the Order and in accordance with the Contract and these Conditions.

#### 4.5 Subject to Clause 4.4, the Council shall pay the undisputed and properly due Charges 30 days from the end of the Month in which an accurate and valid invoice is received, unless otherwise is specified in the Order.

#### 4.6 The Council may set off, deduct or withhold from any liability owed to the Supplier under or in connection with any Contract any current liability of the Supplier to the Council in connection with any Contract whether liquidated or unliquidated and whether owed jointly or severally or in any other capacity.

#### 4.7 The Council reserves the right to recover from the Supplier any payments made and/or costs incurred in the event of the Supplier not meeting its Service Levels in accordance with Clause 8.3.

**Clauses 5 to 7 additionally apply to Contracts in respect of the supply of Goods only.**

### 5 DELIVERY

#### 5.1 The Supplier shall deliver the Goods, properly packed and secured at its own risk, on the date or between the dates (as the case may be) specified in the Order. Delivery of the Goods shall take place at such location as the Council may specify in the Order.

#### 5.2 Time of delivery is of the essence. If the Supplier fails to deliver the Goods or make them available for collection at the time specified in the Order, the Council may:

- (a) refuse to accept any subsequent attempts to deliver the Goods and terminate this Contract immediately and at no cost to the Council by serving notice in writing on the Supplier;
- (b) procure similar goods from an alternative supplier; and
- (c) recover from the Supplier all losses, damages, costs and expenses incurred by the Council arising from the Supplier's default.

#### 5.3 If the Council fails to take delivery of any one or more instalments of Goods delivered in accordance with a Contract, the Supplier shall store the Goods

at its own premises or at another suitable location at its own expense for a reasonable period and arrange with the Council an alternative delivery time.

#### 5.4 The Supplier shall notify the Council immediately after receipt of an Order if the delivery dates for the Goods cannot be met.

#### 5.5 A packing note quoting the Order number must accompany each delivery or consignment of the Goods and must be displayed prominently.

#### 5.6 If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and is not severable.

#### 5.7 The Goods shall:

- (a) be free from defects in materials and workmanship, be of satisfactory quality and conform to and in all respects with the specifications set out in the Order and any other specifications, standards, procedures and requirements agreed in writing between the parties from time to time;
- (b) comply with all Applicable Laws; and
- (c) not be the subject of any security interest, lien, encumbrance, charge or adverse title.

#### 5.8 The Council may reject any Goods which do not comply with Clause 5.7.

#### 5.9 The Council shall not be deemed to have accepted the Goods (in whole or in part) until the Council has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent. Any inspection or testing of the Goods by the Council shall not prejudice the Council's right to reject defective Goods at a later date and make a claim in respect of them.

### 6 TITLE AND RISK

#### 6.1 Risk in the Goods shall pass to the Council once they are delivered to the Council. Title in the Goods shall pass to the Council on delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Council once payment has been made and received by Supplier.

#### 6.2 The Supplier shall at its own cost collect any Goods rejected under Clause 5 or Clause 15. Risk and title in the rejected Goods shall pass back to Supplier at the point at which the Goods are collected or, if earlier, ten days from the date on which the Council notifies the Supplier of the rejection.

#### 6.3 Should the Goods have already been paid for by the Council at the time they are rejected title in the rejected Goods shall pass back to the Supplier when the Council has received a refund of all payment made to the Supplier for the rejected Goods.

### 7 INSTALLATION AND COMMISSIONING

#### 7.1 If required in the Order, the Supplier will install and commission the Goods at no additional cost unless such cost is stated in the Order, by the date in the Order and such installation and commissioning will be regarded as Services.

#### 7.2 Without prejudice to Clause 5.9, the Council will receipt the Order when it is satisfied the successful installation and commissioning of the Goods has taken place and when the Supplier has provided the Council all documents needed to operate and maintain the Goods.

#### 7.3 If Goods are not installed by the Supplier, the Supplier will (on or before delivery) provide the Council with all documents needed to install, operate and maintain the Goods.

#### 7.4 Where reasonably practicable (or required in an Order) the Supplier will on the later of delivery of the Goods or technical handover transfer any manufacturer's warranty in relation to the Goods to the Council.

**Clauses 8 to 10 additionally apply to Contracts in respect of the provision of Services only.**

### 8 PERFORMANCE OF THE SERVICES

#### 8.1 The Supplier shall carry out the Services within the time period specified in the Order. The time that the Services are to be carried out or delivered shall be agreed by the Council Representative in advance.

#### 8.2 The Supplier shall notify the Council Representative when the Services are completed or fully delivered.

#### 8.3 The Supplier shall:

- (a) provide any Services in line with Good Industry Practice;
- (b) at its own expense, promptly supply everything necessary for the performance of its obligations under the Contract and leave the Council Premises, if used, as clean, tidy and safe as they were when it entered them;
- (c) participate in regular reviews of its performance if specified in the Order;
- (d) provide the Goods and Services in line with any Service Levels set out in the Order;
- (e) incur poor performance liabilities (calculated as set out in the Order) where it fails to meet the applicable Service Levels;



(f) provide the Council with such reporting as is specified in the Order and/or as are reasonably required; and

(g) where any report indicates a persistent failure by it to meet any Service Levels, participate as required by the Council in reviews to correct defective Service delivery.

8.4 Any materials used or supplied by Supplier in the performance of the Services shall be in accordance with the highest requirement of any European Union and/or British Standard specifications and or regulations.

8.5 When working on the Council Premises or representing the Council at the site/s defined within the contract, the Supplier shall ensure that all equipment, working conditions and methods are safe and without risks to health for all employees, staff, visitors, users of the Premises, supplier personnel and others. The Supplier shall also ensure that the Supplier Personnel shall comply with any and all applicable the Council Policies and Regulations as well as those applicable third party policies, procedures and regulations.

8.6 The Supplier shall:

(a) ensure that any Services are carried out in such a way as to prevent so far as reasonably possible damage or pollution to the environment;

(b) keep any waste, surplus, condemned (or otherwise unusable) and recyclable materials and rubbish arising from the Services securely and safely on the Premises until cleared away in accordance with Applicable Laws and/or the Council's reasonable instructions;

(c) ensure that any removal of waste is only carried by registered, authorised and licensed carriers

(d) keep a record of the carrier's waste transfer notices, registration, authorisation or licence and of the carrier's written confirmation of the disposal site used.

#### 9 SUPPLIER EQUIPMENT

9.1 The Supplier shall provide all the equipment necessary for the provision of the Services.

9.2 The Supplier shall maintain all items of its equipment within the Premises in a safe, serviceable and clean condition.

9.3 All equipment provided by the Supplier shall be at the risk of the Supplier and the Council shall have no liability for any loss of or damage to such equipment unless the Supplier is able to demonstrate that such loss or damage was caused by the negligence or wilful default of the Council.

#### 10 SUPPLIER'S EMPLOYEES

"The Supplier will indemnify the Council on demand against all claims, demands, actions, awards, judgments, settlements, costs, expenses, liabilities, damages and losses (including all interest, fines, penalties, management time and legal and other professional costs and expenses) incurred by the Council on its own behalf and on behalf of any successor service provider relating to:

(a) the employment and termination of employment of any person who transfers from the Supplier or its Representatives to the Council or any successor service provider under the Employment Regulations or otherwise ("Relevant Employees") provided that (in the case of termination), such termination is carried out within 60 days of the Council becoming aware of the transfer;

(b) any act or omission by the Supplier or its Representatives in respect of any Relevant Employee up to and including the date of transfer; and

(c) any failure by the Supplier or its Representatives to comply with the Employment Regulations save to the extent caused by the Council or any successor service provider.

10.2 At any time on request, the Supplier will provide (as relevant) the Council or any successor service provider with the information specified in regulation 11 of the Employment Regulations in respect of any potential Relevant Employees.

The following Clauses apply to all Contracts.

#### 11 VARIATIONS

11.1 No changes to the Conditions or Contract shall be valid unless a new or revised Order has been issued by the Council.

#### 12 INTELLECTUAL PROPERTY

12.1 The Council will own the Intellectual Property Rights in any New Materials and the Supplier assigns to the Council by present and future assignment, with full title guarantee, all legal and beneficial rights, title and interest in the New Materials.

12.2 The Supplier will continue to own the pre-existing Intellectual Property Rights in any Supplier Materials and where any Supplier Materials are included in any Goods or used in any Services then the Supplier grants the Council a perpetual, irrevocable, worldwide, sub-licensable, assignable, royalty-free,

non-exclusive licence to use Supplier Materials to the extent necessary to take the full benefit of the Contract.

12.3 The Council will continue to own the Intellectual Property Rights in any Council Materials together with any new Intellectual Property Rights and Know-How howsoever developed.

12.4 Where the Council provides the Supplier with Council Materials then it grants the Supplier a limited, revocable, non-assignable, worldwide, royalty-free, non-exclusive licence to use the Council Materials to the extent necessary in accordance with any guidelines the Council notifies it from time to time, solely to the extent needed to fulfil its obligations under the Contract.

#### 13 DATA PROTECTION AND FREEDOM OF INFORMATION

13.1 If, during the term, either party processes Data on behalf of the other party, the provisions of this Clause 13 shall apply.

13.2 Each party shall comply with the requirements of the Data Protection Laws in respect of the activities which are the subject of the Contract and shall not knowingly do anything or permit anything to be done which might lead to a breach by the other of the Data Protection Laws.

13.3 Each party shall only process the Data to the extent necessary to perform its obligations under the Contract and shall have in place, and shall maintain, appropriate technical and organisational measures against unauthorised or unlawful processing of the Data and against accidental loss or destruction of, or damage to, the Data.

13.4 Any Data processed by Supplier under the Contract shall comply with applicable Council Policies and Regulations in place from time to time and, where applicable, third party policies and procedures.

13.5 The Supplier acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 and the EI Regs 2004 and shall promptly and fully assist and cooperate with the Council to enable the Council to comply with its obligations in respect of those requirements.

13.6 While the Council may, if practicable and appropriate, consult with Supplier in relation to whether any **information** relating to Supplier or this Contract should be disclosed as part of a request for information, the Council shall ultimately be responsible for determining in its absolute discretion whether any information will be disclosed and whether any exemptions apply to the disclosure of the information.

#### 14 CONFIDENTIALITY

14.1 Each party shall safeguard the other party's Confidential Information as it would its own confidential information, and shall use, copy and disclose that Confidential Information only in connection with the proper performance of the Contract.

14.2 Nothing in the Contract shall be construed so as to prevent one party from disclosing the other's Confidential Information where required to do so by a court or other competent authority, provided that, unless prevented by law, the first party promptly notifies the other party in advance and discloses only that part of the other party's Confidential Information that it is compelled to disclose.

14.3 Each party shall tell the other immediately if it discovers that this Clause 14 has been breached and shall, on request, return to the other all of the other party's Confidential Information which is in a physical form and destroy any other records containing Confidential Information.

14.4 The obligations in this Clause 14 shall continue without limit in time.

#### 15 WARRANTIES

15.1 Each party represents and warrants that:

(a) it has the power and authority to enter into and perform the Contract, which constitute valid and binding obligations on it in accordance with their terms; and

(b) in performing its obligations under the Contract it shall comply with all Applicable Laws

15.2 The Supplier warrants and represents that the Goods and Services delivered by the Supplier shall:

(a) conform to the Specification and to any descriptions given in quotations, estimates and sales material;

(b) be free from defects in design, materials and workmanship;

(c) comply with all applicable laws, standards and good industry practice (including in relation to their manufacture, packaging and delivery);

(d) be, in the case of Goods, of satisfactory quality within the meaning of the Sale of Goods Act 1979;

(e) be fit for any purpose specified in the Order;

(f) in the case of Services, be carried out with all due skill and diligence and in a good and workmanlike manner, and in accordance with Good Industry Practice;

- (g) in the case of Services, the Supplier's employees and agents will have the necessary skills, professional qualifications and experience to provide the Services in accordance with the Order, including any specifications and Good Industry Practice (with the Supplier being responsible for all costs, fees, expenses and charges for training necessary or required for the Supplier's employees and agents to provide the Services;
- (h) that neither the Goods nor any Services shall infringe any third party Intellectual Property Rights;

15.3 Without limiting any other remedies to which it may be entitled, the Council may at any time after Delivery and at no cost to itself, reject any Goods or Services that do not comply with Clause 15.2 by providing notification to the Supplier. As soon as reasonably practicable but in any event within ten Business Days after receiving the notification, the Supplier shall, at the Council's option:

- (a) repair or replace the Goods; or
- (b) provide the Council with a full refund of the Charges paid by the Council.

15.4 The provisions of this Contract shall apply to any Goods that are repaired or replaced.

## 16 INDEMNITIES

The Supplier shall indemnify the Council from and against all claims, demands, actions, awards, judgments, settlements, costs, expenses, liabilities, damages and losses (including all interest, fines, penalties, management time and legal and other professional costs and expenses) incurred by the Council, its employees, officers, agents and contractors as a result of or in connection with:

- (a) any damage to property or injury to persons resulting from the supply of Goods or provisions of Services;
- (b) any claim by the Council or any third party resulting from the negligence of or breach by or fraud on behalf of the Supplier; or
- (c) any claim, demand or action alleging that the provision and/or use of the Goods or Services has infringed any Intellectual Property Rights of a third party.

## 17 CAPS ON LIABILITY

17.1 Subject to Clauses 17.2 and 17.4, the liability of the Supplier under or in connection with the Contract is limited to:

- (a) for liability arising from loss of or damage to property, £10,000,000 per occurrence; and
- (b) for all other liabilities, the higher of:
- (i) £50,000; or
- (ii) 100% of the total amounts paid and which would be payable under the Contract.

17.2 Other than in respect of death or personal injury to the extent caused by the Council or such other matters for which liability is precluded by the operation of law, the maximum extent of the Council's liability to Supplier in respect of any and all liabilities shall be limited to the lower of:

- (a) The outstanding properly due invoiced amount; or
- (b) £10,000.

17.3 Neither party will be liable for any indirect or consequential loss.

17.4 The exclusions and limitation of liability set out in Clauses 17.1 and 17.2 do not apply to:

- (a) liability arising from death or injury to persons;
- (b) any breach of Clause 13 or Clause 14;
- (c) any indemnity; or
- (d) anything else which cannot be excluded or limited at law,
- (e) to which no limit applies.

## 18 INSURANCE

18.1 Without prejudice to Clause 16 the Supplier shall maintain in force at its own expense with reputable insurance companies:

- (a) employer's liability insurance for the minimum amount of £5 million;
- (b) public and product liability insurance for the minimum amount of £5 million per occurrence and in the annual aggregate;
- (c) professional indemnity, errors or omissions or equivalent insurance for the minimum amount of £1 million per event and in the annual aggregate; and
- (d) any other insurances reasonably required by Applicable Law or by the Council.

18.2 Within 14 days of a request by the Council, the Supplier shall provide evidence of the policies referred to in Clause 18.1.

18.3 The Supplier will provide all facilities, assistance and information reasonably required by the Council or its insurers for the purpose of bringing an action or claim arising out of the performance of these Conditions.

## 19 TERM AND TERMINATION

19.1 The Contract commences on the date of the acceptance of the Order and continues until the Goods have been delivered or the Services have been completed in accordance with the Contract, on which date the Contract will terminate.

19.2 A Contract may be terminated immediately by notice in writing:

- (a) by either party if the other party is in material or continuing breach of any of its obligations under the Contract and fails to remedy the breach (if capable of remedy) for a period of ten working days after written notice by the other party;
- (b) by either party with immediate effect from the date of service on the other party of written notice if:
- (i) such other party becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (as amended);
- (ii) such other party ceases or threatens to cease to carry on the whole or a substantial part of its business;
- (iii) any distress or execution shall be levied upon such other party's property or assets, or any of its property is subject to the exercise of commercial rent arrears recovery;
- (iv) such other party shall make or offer to make any voluntary arrangement or composition with its creditors;
- (v) any resolution to wind up such other party (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency) shall be passed, any petition to wind up such other party shall be presented or an order is made for the winding up of such other party;
- (vi) such other party is the subject of a notice of intention to appoint an administrator, is the subject of a notice of appointment of an administrator, is the subject of an administration application, becomes subject to an administration order, or has an administrator appointed over it;
- (vii) a receiver or administrative receiver is appointed over all or any of such other party's undertaking property or assets;
- (viii) any bankruptcy petition is presented or a bankruptcy order is made against such other party; an application is made for a debt relief order, or a debt relief order is made in relation to the Council; or
- (ix) such other party is dissolved or otherwise ceases to exist.

19.3 Termination shall not affect either of the parties' accrued rights or liabilities, or the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

## 20 FORCE MAJEURE AND EXCLUDED EVENTS

20.1 Neither party shall be liable for any breach of the Contract, and the Council shall not be liable for any failure or delay in providing the Services, arising directly or indirectly as a result of a Force Majeure Event.

## 21 FRAUD, BRIBERY AND CORRUPTION

21.1 Each party shall notify the other immediately if it becomes aware of or has grounds for suspecting any fraud or Malpractice relating to the supply of Goods or Services.

21.2 Without prejudice to any other remedy it may have, if either party has reasonable grounds for believing that any of the other party's personnel has committed a fraud or Malpractice relating to the supply of Goods or Service, that party may, in its absolute discretion:

- (a) suspend the supply of the Goods or Services; and/or
- (b) withhold payment of any Charges falling due.

21.4 Payment of the Charges and supply of the Goods or Services shall be resumed if it is established that the other party's personnel were not responsible for any fraud or Malpractice.

## 22 WHISTLEBLOWING POLICY

22.1 The Supplier shall have, and keep operational, a suitable and effective Public Interest Disclosure Act 1998 (Whistleblowing) Policy which will include procedures under which Supplier Personnel can raise, in confidence, any serious concerns that they may have and do not feel that they can raise in any other way. These will include but will not be limited to situations listed below when Supplier Personnel believe that:

- (i) a criminal offence has been committed, and/or
- (ii) someone has failed to comply with a legal obligation, and/or

- (iii) a miscarriage of justice has occurred, and/or
- (iv) the health and safety of an individual is being endangered, and/or
- (v) there are or may be financial irregularities, and/or
- (vi) there may be a Safeguarding concern.

22.2 The Supplier will make its Whistleblowing Policy available to the Council for inspection upon request.

### 23 GENERAL

- 23.1 The Supplier shall not, without the prior written consent of the Council assign, transfer, grant any security interest over or hold on trust any of its rights or obligations under these Conditions or under the Contract or any interest in them.
- 23.2 The Supplier may not subcontract any of its rights or obligations (or both) under these Conditions or under the Contract without the prior written consent of the Council. The Supplier shall remain responsible for all obligations that are performed by the Supplier Personnel as if they were acts or omissions of the Supplier.
- 23.3 Nothing in these Conditions or the Contract is intended to or shall operate to create a partnership or joint venture or other business arrangement of any kind between the parties. No party shall have the authority to bind the other party or to contract in the name of, or create a liability against, the other party in any way or for any purpose.
- 23.4 Council Materials shall not be used by the Supplier or Supplier Personnel for any purpose whatsoever other than for the performance of the Contract and are to be returned carriage paid, carefully packed. All Council Materials whilst in the Supplier's possession are at Supplier's risk and must be insured by it against loss or damage.
- 23.5 Any waiver by the Council of any breach by the Supplier shall not constitute a waiver of any subsequent breach.
- 23.6 Any failure of delay by the Council in either enforcing or partially enforcing any provision of this Contract is not a waiver of any of its rights under this Contract.

23.7 The parties do not intend any third party to have the right to enforce any provision of these Conditions or of any Contract under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

23.8 If any provision of this Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Contract shall not be affected.

23.9 The rights and remedies expressly conferred by these Conditions or by any Contract are cumulative and additional to any other rights or remedies a party may have.

23.10 Communications under the Contract shall be in writing and delivered by hand, sent by recorded delivery post or by email to the relevant party at its address or email address (as applicable). Without evidence of earlier receipt, communications are deemed received: if delivered by hand, at the time of delivery; if sent by recorded delivery, at 9.00 am on the second Business Day after posting; if sent by email, at the earlier of (i) the time the recipient acknowledges receipt and (ii) 24 hours after transmission, unless the sender receives notification that the email has not been successfully delivered, and provided that a copy is also sent by pre-paid post. In the case of post it shall be sufficient to prove that the communication was properly addressed and posted or transmitted.

23.11 If any dispute arises under or in connection with this Contract, the parties agree to enter into mediation to endeavour to settle such a dispute. The commencement of a mediation will not prevent the parties commencing or continuing court proceedings in the English courts, in accordance with Clause 23.12 below.

23.12 The Contract and any non-contractual obligations arising in connection with it is governed by and construed in accordance with English law, and the English courts have exclusive jurisdiction to determine any dispute arising in connection with them, including disputes relating to any non-contractual obligations.







# SC220269 IVR Payment System Contract

Final Audit Report

2022-11-23

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