**TERMS AND CONDITIONS**

**SOUTHEND ON SEA BOROUGH COUNCIL**

**Asset Data Collection Contract**

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|  **SERVICE Terms and Conditions** |

THIS AGREEMENT made on XXX.

BETWEEN:

(1) XXXX (hereinafter referred to as ‘the Provider’).

(2) Southend on sea borough council of PO Box Civic Centre, Victoria Avenue, Southend-on-Sea, Essex SS2 6FY (hereinafter referred to as the ‘The Council ’).

1. **General**
	1. These Terms and Conditions together with The Council’s Service specification (Schedule 1) and any other relevant document or plan, constitute the contract between the Parties for the Project (“the Contract”).
	2. In providing services to The Council , the Provider will work at all times:
2. in accordance with the specification (Schedule 1) ;
3. with reasonable skill, care and diligence;
4. to the reasonable satisfaction of The Council ;
5. with appropriate skills and qualifications.
	1. The Provider will indemnify The Council and hold The Council harmless against all costs, claims, demands and liabilities arising out of or consequent upon any breach of this obligation, including, but not limited to, design warranty of any designed organisational change process. Furthermore (but without prejudice to the undertaking and indemnity given in the two previous sentences), the Provider will obtain adequate professional indemnity cover for all work done by them under this Agreement, and will provide The Council with a copy of the policy on request. Insurance to be held is Employers Liability to £10m (million), Public Liability to £5m (million) and Professional Indemnity to £2m (million) on a per occurrence/claim basis.
	2. The Provider shall disclose to The Council any actual or potential conflict of interest arising from the Project as soon as is reasonably practicable after becoming aware of the conflict. If the Parties are unable to resolve the conflict to the reasonable satisfaction of The Council, The Council shall be entitled to terminate the Contract with immediate effect.
6. **DURATION OF CONTRACT**
	1. This Contract shall commence on the 1st day of xxxxx and shall continue for xxxxx (xx) months unless terminated sooner in accordance with the provisions of this Contract or extended in accordance with the provisions of this Contract.
7. **STAFFING**
	1. The Provider’s Staff shall be properly and suitably qualified, competent, skilled, honest, instructed, trained, experienced and supervised and shall at all times exercise due care in the execution of their duties as well as:
		1. Comply with the relevant provisions of the Contract; and
		2. Comply with all relevant Law, policies, codes, rules, procedures and standards of the Provider and all relevant rules, codes, policies, procedures and standards of the Council, notified to the Provider by the Contract Manager from time to time.
	2. The Provider shall be liable for any acts, omissions or defaults of its Staff howsoever arising in connection with the Services.

**PRE-EMPLOYMENT CHECKS**

* 1. The Provider shall carry out appropriate pre-employment checks, prior to the appointment of an individual in connection with the Services, (including but not limited to references, medical clearance, proof of right to work in the UK, professional registration/qualifications, and an appropriate Disclosure and Barring Service Check).
	2. The Provider shall obtain consent, prior to the commencement of any work of each Staff member employed to work in connection with this Contract, to carry out all necessary checks under Clause 3.3 and obtain consent of the Staff member to provide evidence upon the request of the Council that such checks have been carried out.
	3. Any Staff member whose conduct places any of the Council’s personnel, any member of the public and/or any third party or any Service User at risk or which might bring the Council into disrepute when working in connection with the provision of the Services shall be the subject of immediate investigation by the Provider and dealt with to the satisfaction of the Council which might direct that the Staff member be removed from working in connection with the Services.
	4. The Provider through monitoring of its compliance with this **Clause 3** shall ensure that the Council is kept advised at all times of any Staff member who, subsequent to his/her commencement of and during employment as a Staff member, commits any criminal act whatsoever or whose previous convictions become known to the Provider or commits any act which puts or could put a Service User at risk or could bring the Council into disrepute.
	5. The Council reserves the right to visit the Provider’s Premises to audit and check disclosure information as specified in **Clause 3** to ensure and confirm evidence provided by the Provider of compliance with this **Clause 3**.

**SAFEGUARDING IN EMPLOYMENT**

* 1. The Provider shall maintain and keep up to date appropriate policies on child protection and the protection of adults at risk. These policies shall comply with any legislative and registration/regulatory requirements, Department of Health guidelines and also with policies, procedures and guidelines issued by the Council. The Provider shall ensure that these policies, procedures and guidelines are communicated to Staff and that appropriate training is provided to Staff in relation to them.
	2. The Provider must have in place comprehensive procedures for reporting of and managing allegations against Staff which demonstrates the promotion of the safety and welfare of children and/or adults at risk and are compliant with statutory requirements. The Provider must be able to evidence safe and robust recruitment procedures and practice for all Staff working with children and/or adults at risk. The Provider shall ensure that Staff know about and comply with the requirements to make accurate, factual and contemporaneous records to ensure compliance with this **Clause 3**.
	3. The Provider should fulfil its legal obligations in relation to carrying out Criminal Records Checks and checking Staff through the DBS or Disclosure Scotland (as appropriate) and the relevant national or local safeguarding authority, where necessary and appropriate and complete a risk assessment form in respect of each Staff member when making decisions in relation to convictions revealed by the Criminal Records Check, using a form equivalent to or exceeds the risk assessment form referred to in the Adult Safeguarding Guidelines http://www.safeguardingsouthend.co.uk/adults/index.html
	4. The Provider is required to pay the full cost of any such registration and related costs. The Provider acknowledges that the Council has legal responsibilities under the SVG and that the Provider must check the Protection of Children list and the Protection of Vulnerable Adults list and comply with all other relevant Law in relation to safeguarding children and/or vulnerable adults and shall provide such evidence of compliance with this **Clause 3** as the Council shall reasonably require.
	5. The Provider shall be entirely responsible for the employment and conditions of service of its Staff and all obligations relating thereto. In addition to the pre-employment checks to be carried out under this **Clause 3**, the Provider shall ensure that suitable references reflecting the Staff member’s suitability to work with children and/or vulnerable adults are taken up as part of the recruitment process.
	6. The Provider shall maintain and disclose to the Council a record of the outcome of the Criminal Records Check, in relation to each Staff member where a Criminal Records Check is required, setting out the disclosure number and date the disclosure was made. The Provider shall store the record of the disclosure securely within the Provider’s organisation in accordance with the Data Protection Act 1998 and DBS Code of Practice. The Provider warrants to the Council that each disclosure number will be unique and can, if necessary, be reconciled against a Staff member’s name engaged or appointed in connection with the Services.
	7. The Provider shall have codes of conduct in place for all Staff that set out clear standards of conduct especially in relation to personal and sexual relationships between Staff and Service Users or other children and/or vulnerable adults.
	8. The Provider must provide evidence of robust and effective complaints and whistle- blowing policies including a guarantee to Staff and Service Users that using these complaints and/or whistle blowing procedures appropriately will not prejudice their own position and prospects.
	9. If abuse of an individual is taking or has taken place or is suspected the Provider must comply with the “duty to refer” by immediately notifying the Contract Manager and/or safeguarding children and adults lead of the Council as well as the Provider’s safeguarding children and vulnerable adults lead and should consider suspension of the Staff member(s) and take emergency measures (for example, inform police/seek medical assessment/treatment (as appropriate)). The Provider must, as far as is practicable, preserve any evidence but may not commence any investigation until authorised to do so by the Contract Manager. The Provider must also notify the DBS and/or Disclosure Scotland (as appropriate) if a Staff member is dismissed or removed from working in connection with the Services for the reasons described in the “Duty to Refer” section of Adult Safeguarding Guidelines <http://www.safeguardingsouthend.co.uk/adults/index.html>.
	10. Not Used.
	11. Not Used
	12. Failure by the Provider to comply with the safeguarding provisions of this **Clause 3** shall entitle the Council to terminate the Contract in accordance with **Clause 9.2**.
1. **LOCATION**
	1. Not used.
	2. Whenever the Provider works on The Council’s premises, the Provider will ensure their compliance with the Health and Safety at Work Act and with The Council’s fire and safety rules and procedures.
2. **PAYMENT**
	1. The Council shall pay the Provider within 30 days of receipt and agreement of invoices, for work completed to the satisfaction of The Council.
	2. In addition to the Price, The Council shall pay the Provider a sum equivalent to any Value Added Tax chargeable in respect of the Project if VAT is due and the Provider provides a valid tax reference. Value Added Tax shall be shown as a separate item on the Provider’s invoice.
	3. The Provider shall be entirely responsible for the payment of all and any income tax, national insurance contributions and any similar liabilities on any Fees earned under this Contract.
	4. No expenses will be incurred in the carrying out of the Project unless expressly agreed by The Council and will be on The Council’s expenses policy.
	5. Not used
3. **CONFIDENTIALITY**
	1. Except in so far as such matters are properly in, or come into, the public domain, the Provider agrees to keep secret and confidential all matters contained in or arising from this Agreement or relating to the study and affairs of The Council, and not to disclose any such confidential information to any person unless otherwise expressly provided by this Agreement, or unless he or she is ordered to do so by a Court of competent jurisdiction.
4. **RELATIONSHIP BETWEEN THE PARTIES**
	1. The relationship of the Provider to The Council shall be that of independent Provider; and at no time shall an employee of the Provider hold himself or herself out as being an employee of The Council.
	2. Save as expressly specified in writing, the Provider (or employee) shall not hold himself or herself out as the agent of The Council, and shall not have any authority to act on behalf of The Council, to conclude any contracts or incur any obligation or liability on behalf of or binding upon The Council, or to sign any document on The Council’s behalf.
5. **ASSIGNMENT OF INTEREST**
	1. The Provider may not sub‑licence, assign, transfer or part with this Agreement or any of his or her rights, duties or obligations under this Agreement.
6. **TERM AND TERMINATION**
	1. Subject to Clause 9.2, this Agreement shall continue until the contracted end date stated in Schedule1.
	2. Notwithstanding Clause 9.1, The Council shall be entitled to terminate this Agreement with immediate effect and without any compensation or damages due to The Council , but without prejudice to any other rights or remedies The Council may have, if the Provider should:
7. commit a serious breach of the terms of this Agreement which they fail to remedy within seven days of receipt of written notice from The Council specifying the breach and requesting remedy;
8. persistently neglect, fail or refuse for whatever reason to perform to the satisfaction of The Council the services which are to be provided under this Agreement;
9. act in any way materially contrary to the interests of The Council whilst providing or purporting to provide the services under this Agreement;
10. the Provider passes a resolution, or the Court makes an order that the Provider be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding‑up order, or the Provider is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.
	1. In the event of the termination of this Agreement under Clause 9.2 the Council shall only be liable to the Provider in respect of fees and expenses in accordance with the terms of this Agreement for the services provided by the Provider up to the effective date of termination.
	2. On the termination of this Agreement (however arising), the Provider shall deliver up to The Council all documents, papers, data, specifications, reports and notes which were furnished by The Council to the Provider or which were prepared by or on behalf of the Provider for The Council in the course of providing services under this Agreement.
	3. The obligations of the parties under Clauses 5 and 6 shall survive the termination of this Agreement (for whatever reason).
11. **INTELLECTUAL PROPERTY**

10.1 All Intellectual Property Rights (IPR) in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

* + 1. provided to the Provider by The Council shall remain the property of The Council ;
		2. Prepared by or for the Provider specifically for the use, or intended use, in relation to the performance of the Contract shall belong to The Council on creation.
	1. The Provider shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party IPR. The Provider shall procure that the owner of the IPR grant to The Council a non-exclusive perpetual and irrevocable licence for the purpose of The Council’s functions and duties as a local authority; or if the Provider is itself a licensee of those rights, the Provider shall grant to The Council a sub-licence for the purposes mentioned. Such licence and any sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right for The Council to sub-license, transfer, and novate or assign to other The Councils, any Replacement Provider or to any other third party providing services to The Council, and shall be granted at no cost to The Council.
	2. It is a condition of the Contract that the Services will not infringe the IPR of any third party and the Provider shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation The Council against all Liabilities which The Council may suffer or incur as a result of or in connection with any breach of this clause or any claim of IPR infringement arising from the Services or performance of the Provider or Provider’s Assigned Personnel.
	3. At the termination of the Contract the Provider shall immediately return to The Council all materials, work or records held in relation to the Services, including any back-up media and information relating to service users.

**11 DATA PROTECTION**

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council and the Provider are Joint Data Controllers The only processing that the Provider is authorised to do under the terms of this contract is listed in Schedule 2 by the Council and may not be determined by the Provider.
2. The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
3. The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
4. a systematic description of the envisaged processing operations and the purpose of the processing;
5. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
6. an assessment of the risks to the rights and freedoms of Data Subjects; and
7. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
8. The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
9. process that Personal Data in accordance with Data Protection Legislation and in particular in accordance with Schedule 2, unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
10. ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
11. nature of the data to be protected;
12. harm that might result from a Data Loss Event;
13. state of technological development; and
14. cost of implementing any measures;
15. ensure that:
16. the Provider Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 2);
17. it takes all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and ensure that they:
18. are aware of and comply with the Provider’s duties under this clause;
19. are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor; 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 Council or as otherwise permitted by this Agreement; and
20. have undergone adequate training in the use, care, protection and handling of Personal Data; and
21. not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
22. the Council or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
23. the Data Subject has enforceable rights and effective legal remedies;
24. Provider 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 Council in meeting its obligations); and
25. the Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
26. at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Provider is required by Law to retain the Personal Data.
27. Subject to clause 11.6, the Provider shall notify the Council immediately if it:
28. receives a Data Subject Access Request (or purported Data Subject Access Request);
29. receives a request to rectify, block or erase any Personal Data;
30. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
31. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
32. 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
33. becomes aware of a Data Loss Event.

Each data controller will have the responsibility for any of the above requests received directly by them. Where appropriate they will seek information from the joint controller or direct the requestor to contact the joint controller directly.

1. The Provider’s obligation to notify under clause 11.5 shall include the provision of further information to the Council in phases, as details become available.
2. Taking into account the nature of the processing, the Provider shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 11.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
3. the Council with full details and copies of the complaint, communication or request;
4. such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
5. the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
6. assistance as requested by the Council following any Data Loss Event;
7. assistance as requested by the Council with respect to any request from the Information Commissioner’s Office, or any consultation by the Council with the Information Commissioner's Office.
8. The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:
9. the Council determines that the processing is not occasional;
10. the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
11. the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
12. The Provider shall allow for audits of its Data Processing activity by the Council or the Council’s designated auditor.
13. The Provider shall designate a data protection officer if required by the Data Protection Legislation.
14. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Provider must:
15. notify the Council in writing of the intended Sub-processor and processing;
16. obtain the written consent of the Council;
17. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 9 such that they apply to the Sub-processor; and
18. provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
19. The Provider shall remain fully liable for all acts or omissions of any Sub-processor.
20. The Provider may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
21. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Council may on not less than 30 Working Days’ notice to the Provider amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

**12 FREEDOM OF INFORMATION**

12.1 The Council is subject to the FOIA and the EIR (“the Acts”). As part of The Council’s duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts.

12.2 The Provider shall assist and cooperate with The Council (at the Provider’s expense) to enable The Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by The Council .

1. **MISCELLANEOUS**
	1. Clause headings are inserted in this Agreement for convenience only, and they shall not be taken into account in the interpretation of this Agreement.
	2. This Agreement cancels and is in substitution for all previous letters and oral agreements relating to the subject matter of this Agreement between The Council or any of its officers and the Provider, all of which shall be deemed to have been terminated by mutual consent.
	3. If any provision of this Agreement shall be held void or unenforceable in whole or part by any Court or other competent authority, the remaining provisions, and the remainder of the provisions affected, shall remain in full force and effect.
	4. All notices or other communications to be served on either party under this Agreement shall be sent by pre‑paid first‑class post to the addresses shown above and shall be deemed served 48 hours after posting unless the contrary is proved.
	5. This Agreement is governed and to be construed in accordance with the laws of England.

**IN WITNESS** of which this Agreement has been duly executed by the parties.

**SIGNED** for and on behalf of **[*The Council]* SIGNED** for and on behalf of **[*Provider*]**

Signature............................................. Signature...........................................

Name .................................................. Name.................................................

**SCHEDULE 1: Service Specification**