|  |
| --- |
| Dated 201X |
| EPPING FOREST DISTRICT COUNCIL (1)and(NOTE: INSERT THE SUPPLIER’S NAME HERE) (2) |
| STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF CONSULTANCY AND OTHER PROFESSIONAL SERVICESFOR(NOTE: INSERT DESCRIPTION) |

**File Ref: «oppo\_ourref»**

**Contents**

|  |  |
| --- | --- |
| **Item** | **Page** |

[SECTION A: PRELIMINARIES 5](#_Toc461186423)

[1 DEFINITIONS AND INTERPRETATION 5](#_Toc461186424)

[2 CONTRACT TERM 5](#_Toc461186425)

[3 DUE DILIGENCE 6](#_Toc461186426)

[4 WARRANTIES 6](#_Toc461186427)

[SECTION B: THE SERVICES 7](#_Toc461186428)

[5 THE SERVICES 7](#_Toc461186429)

[6 Lead Consultant 7](#_Toc461186430)

[7 Council's premises and assets 8](#_Toc461186431)

[SECTION C: PAYMENT 8](#_Toc461186432)

[8 CHARGES 8](#_Toc461186433)

[SECTION D: CONTRACT GOVERNANCE 9](#_Toc461186434)

[9 The Supplier'S RECORDS AND PROVISION OF INFORMATION 9](#_Toc461186435)

[10 ACCESS for AUDIT PURPOSES 9](#_Toc461186436)

[11 DISPUTE RESOLUTION PROCEDURE 9](#_Toc461186437)

[SECTION E: PERSONNEL 10](#_Toc461186438)

[12 EMPLOYEES - GENERALLY 10](#_Toc461186439)

[13 SAFEGUARDING AND IMPROPER CONDUCT 11](#_Toc461186440)

[SECTION F: INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY 11](#_Toc461186441)

[14 COPYRIGHT 11](#_Toc461186442)

[15 DATA PROTECTION 12](#_Toc461186443)

[16 CONFIDENTIALITY AND TRANSPARENCY 13](#_Toc461186444)

[17 FREEDOM OF INFORMATION 15](#_Toc461186445)

[SECTION G: INDEMNITY AND INSURANCE 16](#_Toc461186446)

[18 INDEMNITY 16](#_Toc461186447)

[19 INSURANCE 17](#_Toc461186448)

[SECTION H: REMEDIES AND RELIEF 18](#_Toc461186449)

[20 FORCE MAJEURE 18](#_Toc461186450)

[21 CONTINUED PERFORMANCE 19](#_Toc461186451)

[SECTION I: TERMINATION 19](#_Toc461186452)

[22 DEFAULT 19](#_Toc461186453)

[23 TERMINATION FOR Breach 19](#_Toc461186454)

[24 CONSEQUENCES OF EXPIRY OR TERMINATION 20](#_Toc461186455)

[SECTION J: COMPLIANCE WITH LAWS 21](#_Toc461186456)

[25 Health and Safety 21](#_Toc461186457)

[26 Environmental 21](#_Toc461186458)

[27 Equality and Diversity 21](#_Toc461186459)

[28 Human Rights 22](#_Toc461186460)

[29 WHISTLEBLOWING 22](#_Toc461186461)

[30 PREVENTION OF FRAUD AND BRIBERY 22](#_Toc461186462)

[SECTION K: MISCELLANEOUS AND GOVERNING LAW 23](#_Toc461186463)

[31 COMPLAINTS 23](#_Toc461186464)

[32 LOCAL GOVERNMENT OMBUDSMAN 24](#_Toc461186465)

[33 VARIATION 24](#_Toc461186466)

[34 ASSIGNMENT AND OTHER DEALINGS 24](#_Toc461186467)

[35 ENTIRE AGREEMENT 24](#_Toc461186468)

[36 WAIVER AND CUMULATIVE REMEDIES 24](#_Toc461186469)

[37 SEVERANCE 25](#_Toc461186470)

[38 FURTHER ASSURANCES 25](#_Toc461186471)

[39 RELATIONSHIP OF THE PARTIES 25](#_Toc461186472)

[40 THIRD PARTY RIGHTS 25](#_Toc461186473)

[41 NOTICES 26](#_Toc461186474)

[42 GOVERNING LAW AND JURISDICTION 26](#_Toc461186475)

[43 GENERAL 26](#_Toc461186476)

[44 COUNTERPARTS 26](#_Toc461186477)

[Schedule 1 - THE SUPPLIER 27](#_Toc461186478)

[Schedule 2 - Definitions 28](#_Toc461186479)

[Schedule 3 - Services Specification 33](#_Toc461186480)

[Schedule 4 - Charges 34](#_Toc461186481)

**THIS AGREEMENT** is dated 201X

**BETWEEN**

1. EPPING FOREST DISTRICT COUNCIL of Civic Offices, High Street, Epping, Essex, CM16 4BZ ("the Council")
2. THE SUPPLIER whose identity and address for service is set out in Schedule 1 ("the Supplier")

each a **Party** and together the **Parties**.

**BACKGROUND**

1. The Council has advertised for providers of the Services and following a [[1]](#footnote-1)[quotation or tender process] has selected the Supplier to provide the Services to the Council.
2. The Agreement sets out the terms and conditions on and subject to which the Supplier will provide the Services to the Council.

**NOW THE PARTIES AGREE** as follows:

SECTION A: PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION
	1. In this Agreement, unless the context otherwise requires, capitalised terms shall have the meaning given to that term in Schedule 2 (Definitions) or the meaning given to such term where it is defined elsewhere in this Agreement.
	2. In this Agreement, unless the context otherwise requires:
		1. words in the singular include the plural and vice versa and words importing a gender includes the other gender and the neuter;
		2. references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity;
		3. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
		4. references to Clauses and Schedules are, unless otherwise specified, references to the clauses and schedules of this Agreement;
		5. the Schedules form part of this Agreement; and
		6. headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement.
	3. If there is any conflict between the Clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
		1. the Clauses and Schedule 2 (Definitions);
		2. Schedule 3 (Services Specification); and
		3. any other Schedules.
2. CONTRACT TERM
	1. Subject to Clauses 23 (Termination for Breach) this Agreement shall take effect on the Commencement Date and shall continue in force for the Contract Term.
3. DUE DILIGENCE
	1. Subject to Clause 3.2, the Supplier acknowledges that it is the Supplier's responsibility to carry out such due diligence as it considers appropriate before entering into this Agreement and, in so doing, that it has entered into this Agreement in reliance on its own due diligence alone.
	2. Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Supplier by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
4. WARRANTIES
	1. Each Party represents and warrants that:
		1. it has full capacity and authority to enter into and to perform its obligations under this Agreement;
		2. this Agreement is executed by its duly authorised representative;
		3. there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might adversely affect its ability to perform its obligations under this Agreement;
		4. it has not done, and in performing its obligations under this Agreement, it shall not do, any act or thing that contravenes the Bribery Act 2010 or any other applicable anti-bribery or anti-money laundering laws and/or regulations and it has maintained and monitored, and will maintain and monitor, policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance with the Bribery Act 2010 and related applicable Laws.
	2. The Supplier represents and warrants that as at the Commencement Date:
		1. it has obtained all Necessary Consents;
		2. as at the Commencement Date, warrants and represents that all information contained in the Supplier's Quotation remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the Agreement.
		3. [[2]](#footnote-2)[it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;]
	3. Each of the representations and warranties set out in Clauses 4.1 to 4.2 (inclusive) shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.

SECTION B: THE SERVICES

1. THE SERVICES
	1. The Supplier shall commence the provision of the Services on the Commencement Date and shall thereafter continue to provide the Services throughout the Contract Term in accordance with the terms of this Agreement.
	2. The Supplier shall at all times during the Contract Term perform the Services under this Agreement in accordance with:
		1. all applicable Law and Guidance;
		2. the Required Professional Standard;
		3. In accordance with the Services Specification and any Contract Standard where specified;
		4. all relevant rules, codes, policies, procedures and standards of the Councils which may be referred to in the Services Specification; and
		5. the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.2.1 to 5.2.4.
	3. The Supplier shall:
		1. pay proper regard to (and, where appropriate, ensure compliance with) the statutory duties of the Council insofar as the Supplier is required to perform such statutory duties on the Council's behalf;
		2. at all times allocate sufficient resources with the appropriate professional expertise to provide the Services in accordance with this Agreement;
		3. obtain and maintain throughout the Contract Term, all Necessary Consents;
		4. [[3]](#footnote-3)[comply with the requirements of the Council's Contract Procurement Rules and Financial Regulations and with any regulations and up-dates issued in accordance with these].
		5. as far as reasonably practicable minimise any disruption to the Council's operations when providing the Services;
		6. at all times comply with the reasonable directions of the Council and use its reasonable endeavours to promote the interest of the Council; and
		7. not wilfully engage in any act or omission which is reasonably likely to bring the Council into disrepute.
2. Lead Consultant
	1. Where it is stated in the Services Specification the Supplier will appoint a Lead Consultant and the Supplier will not delegate the Services to another employee or agent of the Supplier without the written consent of the Council.
3. Council's premises and assets
	1. The Council shall if required provide the Supplier (and its Sub-Contractors) with access to such parts of the Council's Premises as the Supplier reasonably requires for the purposes only of properly providing the Services.
	2. The Supplier shall ensure that:
		1. where using the Council's Premises and any Council Assets they are kept properly secure and it will comply and cooperate with the Council's Authorised Representative's reasonable directions regarding the security of the same;
		2. only those of the Supplier's Personnel that are duly authorised to enter upon the Council's Premises for the purposes of providing the Services, do so;
		3. any Council Assets used by the Supplier are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Council Premises unless expressly permitted under this Agreement or by the Council's Representative.
	3. The Supplier shall notify the Council immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Sub-Contractors to any property of the Council, to any of the Council's Premises or to any property of any other recipient of the Services in the course of providing the Services.

SECTION C: PAYMENT

1. CHARGES
	1. In consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Council shall pay the Charges to the Supplier.
	2. All Charges payable under this Agreement shall be exclusive of VAT which shall be paid at the rate and in the manner as prescribed by law.
	3. Where VAT is chargeable in respect of any of the Services, the Supplier shall calculate the amount of VAT to be paid by the Council at the applicable prevailing rate, which shall be added to the Charges and paid by the Council following the submission of a VAT invoice by the Supplier in respect of the same.

8.4 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8.5 The Council will pay all Charges due under this Agreement within 30 days of the receipt of a valid VAT invoice.

8.6 Any Charges due and remaining unpaid at the expiry of 30 days after the date of issue of a valid VAT invoice in respect of the Charges due shall bear interest at 8% over Bank of England Base Rate current at the date of issue of the invoice.

SECTION D: CONTRACT GOVERNANCE

1. The Supplier'S RECORDS AND PROVISION OF INFORMATION
	1. During the Contract Term the Supplier shall retain and maintain at its own expense all Records in accordance with Required Professional Standard in a form that is capable of audit and such Records shall be retained by the Supplier for a period of at least six (6) years from the date of creation of such records or for such longer period as may be required by any applicable Law.
	2. The Supplier shall at reasonable times and within normal business hours:
		1. make the relevant Records available for inspection by the Audit Agents; and
		2. provide or procure access to such facilities to enable the Audit Agents to visit any place where the Records are held for the purposes of such inspection,

provided always that the Council shall give the Supplier reasonable notice of such inspection and afford the Supplier a reasonable period of time to collate any relevant information and/or Records where this is required for the purposes of the inspection.

* 1. All information and Records referred to in this Clause 9 are subject to the provisions of Clauses 15 (Data Protection), 16 (Confidentiality and Transparency) and 17 (Freedom of Information).
1. ACCESS for AUDIT PURPOSES
	1. Subject always to Clauses 15 (Data Protection) and 16 (Confidentiality and Transparency) of this Agreement, the Supplier shall assist Council Representatives with any audit process or investigation by allowing them unrestricted access to any records provided reasonable notice is served e.g. documentation, files, statements, literature data or any other similar material, in whatever form relating to the carrying out of the Services, including access to any premises in which such material is stored, processed or otherwise kept. Such Council Representative shall also be entitled to take copies of any and all documentation and to access and copy computer data.
	2. The Supplier shall allow the Council’s Representatives to take statements from any of the Supplier's Personnel at times within working hours in connection with an audit process or investigation. Such staff should be instructed by the Supplier to co‑operate fully with such audit process or investigation pertaining to the Services.
	3. The Parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this Clause 10.
2. [[4]](#footnote-4)[DISPUTE RESOLUTION PROCEDURE
	1. The Parties shall use all reasonable endeavours to negotiate in good faith and settle promptly any dispute (**"the Dispute"**) in accordance with this Clause 11:
		1. either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("the **Dispute Notice"**), together with relevant supporting documentation. On service of the Dispute Notice the Representatives shall attempt in good faith to resolve the Dispute;
		2. if the Parties' Representatives are for any reason unable to resolve the Dispute within 21 Working Days of it being referred to them, the Dispute shall be referred to Chief Executive of the Council and the Chief Executive or equivalent of the Supplier who shall attempt in good faith to resolve it;
		3. if the Parties' Chief Executives or equivalent cannot resolve the Dispute within 21 Working Days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing ("**ADR notice"**) to the other Party requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 Working Days after the date of the ADR notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator.
	2. Where a Party terminates any mediation procedure under this clause without the Agreement of the other Party, the terminating Party shall bear the costs of the mediation.
	3. Neither Party may commence any court proceedings in relation to any dispute arising out of this Agreement until they have attempted to settle it by mediation, but should any mediation be terminated by agreement between the Parties, either Party may commence court proceedings/arbitration.
	4. Nothing in this Dispute Resolution Procedure shall in any way affect either Party's right to terminate this Agreement in accordance with any of its terms.]

SECTION E: PERSONNEL

1. EMPLOYEES - GENERALLY
	1. The Supplier shall at all times ensure that, in respect of the Supplier Personnel engaged in the provision of the Services:
		1. each of such Supplier Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
		2. there is an adequate number of the Supplier Personnel to properly provide the Services; and
		3. all of the Supplier Personnel who require access to the Council's Premises in connection with the provision of the Services comply with the relevant Council policies relating to access and/or use of the Council's Premises, provided always that such policies (including any updates thereto) are brought to the attention of the Supplier and the Supplier is provided with copies of such policies.
	2. The Council reserves the right to refuse to admit (acting reasonably) to the Council's Premises any person employed or engaged by the Supplier (including any Subcontractor) where admission would, in the reasonable opinion of the Council:
		1. present a risk to the Council; or
		2. would be a threat to the security or operations of the Council.
	3. Where the Council exercises its right to refuse admission to any person employed or engaged by the Supplier pursuant to Clause 12.2, the Council shall notify the Supplier in writing of such refusal without delay, including the identity of the person who has been refused such admission and the Council's reasons for refusing admission to such persons.
2. [[5]](#footnote-5)[SAFEGUARDING AND IMPROPER CONDUCT

13.1 The Supplier acknowledges that the Council is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

13.2 The Supplier shall

13.2.1 Ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service ("DBS"); and

13.2.2 Monitor the level and validity of the checks under this Clause 13 for each member of Supplier Personnel; and

13.2.3 Not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users; and

13.2.4 At the Commencement Date have in place an improper conduct policy and use reasonable endeavours to ensure all Supplier Personnel comply with its policy; and

13.2.5 Ensure adequate training is annually provided to Supplier Personnel on the prevention of improper conduct, identifying incidents, and reporting processes; and

13.2.6 Comply with all the Council's Safeguarding Procedures

13.3 The Supplier warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

13.4 The Council shall immediately notify the Supplier of any information it reasonably requests to enable it to be satisfied that the obligations of this Clause 13 have been met.

13.5 The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to Service Users, or children or vulnerable adults.]

SECTION F: INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

1. COPYRIGHT
	1. The Supplier hereby grants to the Council an unconditional and royalty-free as well as an irrevocable, non-exclusive licence in respect of the Documents. The Council shall be entitled to use and to reproduce any of the Documents for any purpose whatsoever connected with the Services, including the construction, advertisement, letting, sale, maintenance, repair, reinstatement, reconstruction and extension of the Services. The Council shall be entitled to grant sub-licences in the terms of this Agreement.
	2. The Supplier warrants that the use of the Documents for the purposes of the Services will not infringe the rights of any third party.
	3. After the termination and /or completion of the supply of the Services by the Supplier under this Agreement, the Supplier shall supply the Council with copies and/or computer disks or memory sticks of such of the Documents as the Council may from time to time request, and the Council shall pay the Supplier reasonable costs of producing such copies and/or disks or memory sticks.
2. DATA PROTECTION
	1. The Supplier shall:
		1. process the Personal Data only in accordance with instructions from the Council to perform its obligations under this Agreement (such instructions being timely and forthcoming);
		2. ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data;
		3. not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and/or the performance of its obligations under this Agreement;
		4. take all reasonable steps to ensure the reliability and integrity of any third party who has access to the Personal Data and ensure that such third party are aware of and comply with the Supplier’s duties under this Clause 15 (Data Protection) and Clause 16 (Confidentiality and Transparency);
		5. notify the Council within five (5) Working Days if it receives:
			1. from a Data Subject (or third party on their behalf):
				1. a Data Subject Access Request (or purported Data Subject Access Request);
				2. a request to rectify, block or erase any Personal Data; or
				3. any other request, complaint or communication relating to the Council's obligations under the DPA;
			2. any communication from the Information Commissioner or any other Relevant Authority in connection with Personal Data; or
			3. 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;
		6. provide the Council with reasonable cooperation and assistance (within the timescales reasonably required by the Council) in relation to any complaint, communication or request made (as referred to at Clause 15.1.5, including by promptly providing:
			1. the Council with full details and copies of the complaint, communication or request;
			2. where applicable, such assistance as is reasonably requested by the Council to enable the Council to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
			3. the Council, on request by the Council (acting reasonably), with any Personal Data it holds in relation to a Data Subject; and
		7. if requested by the Council (acting reasonably), provide a written description of the measures it has taken and the technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 15 and provide to the Council copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals (as the case may be).
3. CONFIDENTIALITY AND TRANSPARENCY

 **Confidentiality**

* 1. For the purposes of this Clause 16, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
	2. Except to the extent set out in this Clause 16 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
		1. treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
		2. not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
		3. not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Agreement; and
		4. immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.
	3. The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
		1. the Recipient is required to disclose the Confidential Information by Law, provided that Clause 17 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
		2. the need for such disclosure arises out of or in connection with:
			1. any legal challenge or potential legal challenge against a Party arising out of or in connection with this Agreement; or
			2. the purpose of the examination and certification of the either Party's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council is making use of any Services provided under this Agreement.
	4. If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or the Relevant Authority requiring such disclosure and the Confidential Information to which such disclosure would apply.
	5. Subject to this Clause 16, either Party may only disclose the Confidential Information of the other Party on a confidential basis to:
		1. its personnel who are directly involved in the provision or receipt of the Services (as the case may be) and need to know the Confidential Information to enable performance by the respective Party of its obligations under this Agreement;
		2. its professional advisers for the purposes of obtaining advice in relation to this Agreement; and

Where the a Party discloses the Confidential Information of the other Party pursuant to this Clause 16.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

* 1. The Council may disclose the Confidential Information of the Supplier:
		1. strictly on a confidential basis for the purpose of Clause 10 ( Access for Audit Purposes); or
		2. to a proposed Successor Body.
	2. Nothing in this Clause 16 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party’s Confidential Information or an infringement of Intellectual Property Rights.

 **Transparency**

* 1. [[6]](#footnote-6)[The Supplier acknowledges that the Council is required to comply with the Code of Recommended Practice on Data Transparency for Local Authorities published by The Department for Communities and Local Government under section 2 of the Local Government Planning and Land Act 1980 (the **"Transparency Code"**).]
	2. The Supplier acknowledges that the Council may be required to publish this Agreement (with the exception of any Commercially Sensitive Information), including from time to time agreed changes to this Agreement, to the general public in accordance with the Transparency Code provided that, in doing so:
		1. the Council shall consult with the Supplier prior to publishing the Agreement in order to discuss in good faith and agree any redactions (such agreement not to be unreasonably withheld or delayed); and
		2. the Supplier shall provide reasonable assistance to the Council to enable the Council to publish this Agreement.
1. FREEDOM OF INFORMATION
	1. The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
		1. provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
		2. transfer to the Council all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
		3. provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council reasonably requires within ten (10) Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
		4. not respond directly to a Request for Information unless authorised in writing to do so by the Council.
	2. The Supplier acknowledges that the Council may in certain circumstances be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the Supplier. The Council shall take all reasonable steps to notify and consult the Supplier about all Requests for Information (in accordance with the Secretary of State for Constitutional Affairs' section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA and the Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (together the "**Codes**")) to the extent that it is permissible and reasonably practical for it to do so and shall take the Supplier's views into account regarding the relevant Request for Information.
	3. Subject to Clauses 17.4 and 17.5, where the Council receives a Request for Information in relation to Information that the Supplier is holding on its behalf, and which the Council does not hold itself, the Council shall transfer to the Supplier such Request for Information that it receives as soon as practicable and in any event within five (5) Working Days of receiving a Request for Information and the Supplier shall:
		1. provide the Council with a copy of all such Information in the form that the Council reasonably requires as soon as reasonably practicable and in any event within ten (10) Working Days (or such other period as the Council may specify, acting reasonably) of the Council’s request; and
		2. provide all necessary assistance as reasonably requested by the Council in connection with any such Information, to enable the Council to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Section 5 of the EIR as applicable.
	4. Subject to Clause 17.2, following notification under Clause 17.3 and up until such time as the Supplier has provided the Council with all the Information specified in Clause 17.3.1, the Supplier may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further Information should reasonably be provided in order to identify and locate the Information requested, and the Council shall take such representations into account provided always that the Council shall be responsible for determining at its absolute discretion:
		1. whether the Information is exempt from disclosure under the FOIA or the EIR as applicable; and
		2. whether the Information is to be disclosed in response to a Request for Information.
	5. Without prejudice to Clause 17.4, if the Council receives a Request for Information (whether via the Supplier or otherwise) which relates to or requires the disclosure of Commercially Sensitive Information, the Council shall, in good faith, consider any objections and/or representations made by the Supplier regarding the disclosure of such Commercially Sensitive Information prior to responding to the Request for Information. The Supplier acknowledges that the Council is responsible for determining in its absolute discretion whether the Commercially Sensitive Information is exempt from disclosure in accordance with the provisions of the Codes, FOIA or the EIR.
	6. If, in response to a Request for Information, the Council concludes that it is obliged to disclose some or all of the Commercially Sensitive Information it shall (in accordance with any recommendations of the Codes) take all reasonable steps to give the Supplier notice in writing of its decision prior to the disclosure of the Commercially Sensitive Information.
	7. In the event of a request from the Council pursuant to Clause 17.3 the Supplier shall as soon as practicable, and in any event within five (5) Working Days of receipt of such request, inform the Council of the Supplier's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Council under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Council’s own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in section 12(1) of the FOIA and as set out in the Fees Regulations, the Council shall inform the Supplier in writing whether or not it still requires the Supplier to comply with the request and where it does require the Supplier to comply with the request the ten (10) Working Days period for compliance shall be extended by such number of additional days for compliance as the Council is entitled to under section 10 of the FOIA. In such case, the Council shall notify the Supplier of such additional days as soon as practicable after becoming aware of them and shall reimburse the Supplier for such costs as the Supplier incurs in complying with the request.
	8. For the purpose of this Clause 17, "**Information**" has the meaning given under section 84 of the FOIA and the meaning attached to "environmental information" contained in section 2 of the EIR as appropriate.

SECTION G: INDEMNITY AND INSURANCE

1. INDEMNITY
	1. The Supplier shall, without prejudice to any other indemnities given elsewhere in the Agreement, be responsible for, and shall release and indemnify the Council on demand from and against all liability for:
		1. death or personal injury;
		2. loss of or damage to property (including any Council Premises and Assets Council for which it is responsible);
		3. breach of statutory duty;
		4. third party actions, claims or demands (together with all costs, charges and expenses (including legal expenses on an indemnity basis) incurred in connection therewith); and
		5. Losses

which may arise out of, or in consequence of, the performance or non-performance by the Supplier of its obligations under the Agreement , the use of the Council Property or Assets or for which it is responsible, or the acts or omissions of the Supplier, its Staff, agents and/or subcontractors.

* 1. The Supplier shall be liable for and shall indemnify the Council in respect of all damage loss or injury which the Council may suffer as a result of any act of neglect or default of the Supplier its employees or agents or any failure by the Supplier to perform the Services in accordance with the terms of this Agreement.
1. INSURANCE
	1. Without prejudice to Clause 18 (Indemnity), the Supplier shall at its own cost effect and maintain in force with reputable insurance companies such policies of insurance as set out below:
		1. Professional Indemnity Insurance to a value not less than £2 million for any one occurrence or series of occurrences arising out of this agreement provided that it is available at commercially reasonable rates in force for a period of 7 years from the date of completion of the Services;
		2. Employers Liability Insurance to a value not less than £10 million; and
		3. Public Liability Insurance to a value not less than £5 million.

(together "the **Required Insurances**").

* 1. If for any period Professional Indemnity Insurance is not available on commercially reasonable terms, the Supplier shall forthwith inform the Council by notice, and shall obtain in respect of such period such reduced level of Professional Indemnity Insurance as is available and as would be fair and reasonable in the circumstances for the Supplier to obtain.
	2. The Supplier shall within seven working days of the Council's request provide the Council with evidence that the Required Insurances are being maintained at its own expense.
	3. Each Party shall, during the term of this Agreement do nothing to invalidate any insurance policy and use its reasonable endeavours to procure that the terms of such policies are not altered in such a way as to have a material adverse effect on the benefit of such policies as they were at the Commencement Date.
	4. If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to keep such insurance in force and may recover the costs of such arrangements from the Supplier.
	5. The Council shall immediately notify the Supplier of any claims or potential claims of which it becomes aware in relation to any risk covered by any of the Required Insurances and for which it reasonably believes that the Supplier is responsible and shall provide the Supplier with all information and assistance it may reasonably require in order for the Supplier to effectively manage such claim.

SECTION H: REMEDIES AND RELIEF

1. FORCE MAJEURE
	1. Subject to the remaining provisions of this Clause 20, neither Party shall in any circumstances be liable to the other Party for any Default, delay, or non-performance of its obligations under this Agreement to the extent that such non-performance is due to a Force Majeure Event.
	2. In the event that either Party (the "**Affected Party**") is delayed or prevented from performing its obligations under this Agreement due to a Force Majeure Event, the Affected Party shall:
		1. give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof, its estimated duration and any action proposed to mitigate its effect;
		2. use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
		3. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
	3. The other Party shall use its reasonable endeavours to assist the Affected Party in delivering the Service.
	4. The Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
	5. As soon as practicable following the Affected Party's notification pursuant to Clause 20.2, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.
	6. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event unless agreed otherwise by the Parties in writing.
	7. In the event that either Party is prevented from carrying out its obligations under the Agreement by any act of Force Majeure which continues for a period of seven (7) days, the other Party may terminate the Agreement immediately by giving notice in writing . Where this Agreement is terminated pursuant to this Clause 30.6, neither Party shall be liable to the other Party for any Losses arising out of the termination.
2. CONTINUED PERFORMANCE
	1. Save as may be required to give effect to the granting of relief from obligations under Clause 20 (Force Majeure), the Parties shall continue to perform their obligations under this Agreement notwithstanding the giving of any notice of termination, or natural expiry, of this Agreement until the termination or expiry of this Agreement becomes effective in accordance with the relevant provision.

SECTION I: TERMINATION

1. DEFAULT
	1. If for any reason the Supplier is unable to comply with any of its obligations under this Agreement it shall immediately notify the Council in writing of its failure and the reasons for it. Compliance with this Clause shall not prejudice the Council’s rights under this Clause and Clause 23.
	2. In the event that the Supplier commits a Default (including any breach of which the Supplier may have given notice under Clause 22.1 of this Agreement) without prejudice to the Council’s rights to immediately terminate this Agreement, the Council may issue the Supplier with a Default Notice.
2. TERMINATION FOR Breach
	1. This Agreement shall terminate automatically on the Expiry Date unless it shall have been terminated earlier in accordance with the provisions of this Clause or as set out elsewhere in this Agreement. For the avoidance of doubt the Supplier shall not be entitled to any compensation on expiry. Without limiting its other rights or remedies, the Council may terminate the Agreement with immediate effect by giving written notice to the Supplier if:
		1. the Supplier commits a Default which is not capable of remedy or which the Supplier fails to remedy in accordance with a Default Notice;
		2. subject to Clause 30 the Supplier commits a Prohibited Act;
		3. a representation and warranty given by the Supplier pursuant to Clause 4 (Warranties) being materially untrue or misleading;
		4. the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a Supplier) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
		5. the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
		6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
		7. a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
		8. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a Supplier);
		9. a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
		10. a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
		11. the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
		12. makes an assignment of this Agreement in breach of Clause 34 (Assignment and Other Dealings);
		13. breaches any of its obligations under Clause 19 (Insurance).
3. CONSEQUENCES OF EXPIRY OR TERMINATION

In the event of this Agreement being determined whether by effluxion of time, notice of breach or otherwise:

* 1. Each Party shall return to the other all property in their possession belonging to the other Party.
	2. At the request of the Council the Supplier shall promptly:
		1. destroy or return to the Council all Confidential Information and copies thereof (irrespective of the manner in which they are recorded;)
		2. erase or delete any Confidential Information which the Supplier may have entered into any computer database or other programme, and
		3. certify in writing to the Council that it has complied with the requirements of this Clause 24.2 provided that the Supplier may retain documents and materials containing, reflecting, incorporating or based on the Confidential Information to the extent required by law or regulatory order, and to the extent reasonable to permit the Supplier to keep evidence that it has performed its obligations under this agreement.
	3. The Council shall pay to the Supplier the Charges due and owing to the Supplier up to the date of termination after taking into account all monies due to the Council.
	4. Where termination results under Clause 23 of this Agreement the Council shall be entitled to obtain the remainder of the Services from a third party and to the extent that the cost exceeds that to have been provided by the Supplier, the Council shall be entitled to recoup the same from the Supplier together with any other costs incurred as a direct consequence of termination.
	5. Termination of this Agreement shall not prejudice or affect any right of action or remedy which shall accrue or shall thereafter accrue to either party and that the provisions of this Clause 24 shall remain in force.

SECTION J: COMPLIANCE WITH LAWS

1. [[7]](#footnote-7)[Health and Safety
	1. The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
		1. all applicable Law regarding health and safety; and
		2. the Council's health and safety policy
	2. The Supplier shall notify the Council as soon as practicable of any health and safety incidents or material health and safety hazards at the Council Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. Each Party shall instruct their personnel (as applicable) to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.]
2. [[8]](#footnote-8)[Environmental
	1. The Supplier shall:
		1. when working on the Council's Premises, it would be preferable for Supplier to perform this Agreement in accordance with the Council’s Environmental Policy which is committed to the prevention of pollution, reduction of our CO2 emissions, minimise the environmental impacts associated with all activities, products and services of the business;
		2. follow a sound environmental management policy so that its activities comply with all applicable environmental legislation and regulations and that the Services are procured, delivered and are capable of being used and ultimately disposed of, in ways that are appropriate from an environmental protection perspective; and
		3. comply with all applicable environmental legislation and other requirements as appropriate to our business, which may apply in the performance of this Agreement.]
3. [[9]](#footnote-9)[Equality and Diversity
	1. Each Party shall:
		1. perform their respective obligations under this Agreement (including those in relation to the Services) in accordance with all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise); and
		2. take all necessary steps, and inform the other Party of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).
	2. The Supplier shall:
		1. submit to the Council an equality and diversity policy for the purposes of the delivery of the Services which has due regard to the Council's equality and diversity policy or shall comply with the Council’s equality and diversity policy;

27.2.2 provide the approved policy or the Council’s Policy to all Supplier Personnel and use its reasonable endeavours to procure that it and the Supplier Personnel at all times comply with the policy in the performance of this Agreement; and]

1. Human Rights
	1. The Supplier shall (and shall use its reasonable endeavours to procure that the Supplier Personnel at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement.
	2. The Supplier shall undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.
2. [[10]](#footnote-10)[WHISTLEBLOWING
	1. The Supplier shall submit to the Council a whistleblowing policy for it to approve or agree to comply with the Council’s Whistleblowing Policy. The Suppliers policy shall have due regard to the Council's whistleblowing policy and allow Supplier Personal to make a qualifying disclosure, for the purposes of the Public Disclosure Act 1998, to the Council.
	2. The Supplier shall use its reasonable endeavours to procure that it and the Supplier Personal at all times comply with the policy.]
3. PREVENTION OF FRAUD AND BRIBERY
	1. The Supplier represents and warrants that as at the Commencement Date neither it, nor to the best of its knowledge any of its staff, have at any time prior to the Commencement Date:
		1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
		2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government contracts on the grounds of a Prohibited Act.
	2. The Supplier shall not during the Contract Term of this Agreement:
		1. commit a Prohibited Act; and/or
		2. do or suffer anything to be done which would cause the Council to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
	3. The Supplier shall during the Contract Term of this Agreement:
		1. establish, maintain and enforce, and require that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
		2. keep appropriate records of its compliance with its obligations under Clause 30.3.1 and make such records available to the Council on request.
	4. The Supplier shall as soon as reasonably practicable notify the Council in writing if it becomes aware of any breach of Clause 30.2.1 and/or 30.2.2, or has reason to believe that it has:
		1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
		2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
		3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly connected with this Agreement has committed or attempted to commit a Prohibited Act.
	5. If the Supplier makes a notification to the Council pursuant to Clause 30.4, the Supplier shall respond promptly to the Council's reasonable enquiries and cooperate with any investigation carried out by the Council (acting reasonably) in respect of such notification.
	6. If the Supplier is in breach of Clauses 30.1 and/or 30.2 the Council may by notice require the Supplier to remove from performance of this Agreement any member of staff or Subcontractor whose acts or omissions have caused the breach.
	7. Any notice served by the Council under Clause 30.6 shall specify the nature of the Prohibited Act, the identity of the person who the Council reasonably believes has committed the Prohibited Act and the action that the Council requires the Supplier to take as a result.

SECTION K: MISCELLANEOUS AND GOVERNING LAW

1. COMPLAINTS
	1. Upon or as soon as possible after the Commencement Date, but in any event by no later than the date ending three (3) months from the Commencement Date (unless otherwise agreed by the Parties), the Supplier shall adopt and comply with a procedure (the **"Complaints Procedure"**) to deal appropriately and effectively with complaints from third parties arising from or connected with the performance or non-performance of the Services.
	2. The Supplier shall keep a record of any complaints received (whether received orally or in writing, and whether from members of the Council, members of the public or otherwise) and of the action taken by the Supplier to remedy or fully investigate each such complaint. Such records shall be kept available for inspection by the Council's Representative at all reasonable times during normal working hours.
2. LOCAL GOVERNMENT OMBUDSMAN
	1. The Supplier shall provide the Council with all reasonable cooperation and assistance in relation to any investigation by the Local Government Ombudsman in connection with the performance by the Supplier of the Services under this Agreement.
3. VARIATION
	1. No amendment or variation of this Agreement shall be effective unless it is in writing and signed by the Parties (acting through their duly authorised representatives) and is expressed to be for the purpose of such amendment or variation.
4. ASSIGNMENT AND OTHER DEALINGS
	1. The Supplier may not delegate, assign, transfer, mortgage, charge, subcontract, or otherwise deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the Council.
	2. The Council may at its discretion assign, novate, or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement to a body other than the Council which performs any of the functions that previously had been performed by the Council ("a **Successor Body**").
5. [[[11]](#footnote-11)ENTIRE AGREEMENT
	1. This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
	2. Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
	3. Nothing in this Clause 35 shall exclude any liability in respect of misrepresentations made fraudulently.
6. ENTIRE AGREEMENT
	1. Subject to clause 35.2 below, this Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
	2. For the avoidance of doubt, this Agreement does not supersede or extinguish the following documents which are expressly incorporated into the Services Specification of this Agreement
* **(Note: please insert here list of any documents forming part of this Contract)**.
	1. Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
	2. Nothing in this Clause 35 shall exclude any liability in respect of misrepresentations made fraudulently.]
1. WAIVER AND CUMULATIVE REMEDIES
	1. A waiver of any right or remedy under this Agreement or by law is only effective if given in writing, which expressly states that a waiver is intended, and such waiver shall not be deemed a waiver of any subsequent breach or default.
	2. A failure or delay by a Party in ascertaining or exercising any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
	3. Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.
2. SEVERANCE
	1. If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
	2. In the event that any deemed deletion under Clause 37.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original intentions.
	3. If the Parties are unable to agree on the revisions to this Agreement within five (5) Working Days of the matter shall be dealt with in accordance with Clause 11 (Dispute Resolution Procedure).
3. FURTHER ASSURANCES
	1. At its own expense, each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.
4. RELATIONSHIP OF THE PARTIES
	1. During this Agreement the Supplier shall be an independent contractor and not an agent or employee of the Council.
	2. Nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.
5. THIRD PARTY RIGHTS
	1. A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
	2. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.
6. NOTICES
	1. Any notices sent under this Agreement must be in writing.
	2. Any notice or other document to be served under this Agreement may be delivered or sent by prepaid first class recorded delivery or registered post to the Party to be served, at the address of that Party identified in this Agreement or at any other address as either Party may have notified to the other and shall be deemed to have been received by the addressee within 72 hours of posting. Any notice or document served on the Council should be addressed to the Chief Executive.
	3. In proving service of a notice or document it shall be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class recorded delivery or registered letter.
7. GOVERNING LAW AND JURISDICTION
	1. This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England.
	2. Subject to Clause 11 (Dispute Resolution Procedure) the Parties agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.
8. GENERAL
	1. Both Parties hereby acknowledge that they have had an opportunity to take independent legal advice before signing this agreement
	2. Both Parties acknowledge that their relationship is governed by this Agreement as a legally binding Agreement
9. COUNTERPARTS
	1. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
	2. No counterpart shall be effective until each Party has executed and delivered at least one counterpart.

**IN WITNESS WHEREOF** this Agreement has been duly executed as a deed and has been delivered on the date inserted at the beginning of this Agreement.

1. - THE SUPPLIER

|  |
| --- |
| **"the Supplier"** |
| **Full name of Supplier and company number (where applicable)** |  |
| **Registered address for service of Supplier** |  |
| **Supplier's Representative** | **Name:****Contact address:****Email:****Telephone no:** |

1. - Definitions
	* + 1. Unless the context otherwise requires, the following expressions shall have the meanings set out below:
2. Agreement means the agreement concluded between the Council and the Supplier for the provision of the Services, comprising of the Agreement and Schedules, the Council's invitation to quote, the Supplier’s Quotation and all other documents which are incorporated into the Agreement;
3. Audit Agents means:
	1. the Council's statutory and regulatory auditors; and
	2. the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office.
4. CEDR Model Mediation Procedure means the Centre for Effective Dispute Resolution Model Mediation Procedure 2016 edition.
5. Charges means the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 4 (Charges).
6. Code shall have the meaning given to that term in Clause 17.2.
7. Commencement Date means [ ] 201X
8. Complaints Procedure means the initial complaints procedure to be observed by the Supplier, to be adopted and modified from time to time in accordance with Clause 31 (Complaints).
9. Confidential Information means:
	1. Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:
		1. the Disclosing Party; or
		2. the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party;
	2. other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent (whether or not it is so marked) or that ought reasonably to be considered to be confidential which comes (or has come) to the Recipient’s attention or into the Recipient’s possession in connection with this Agreement;
	3. discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
	4. Information derived from any of the above,

but not including any Information which:

* + 1. was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
		2. the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient’s knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
		3. was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
		4. was independently developed without access to the Confidential Information.

 Contract Standard means the standard that complies with the performance targets and other provisions of the Services Specification and to the extent that no criteria are stated in the Services Specification to the reasonable satisfaction of the Council and in any event in compliance with the requirements of Best Value under Part 1 of the Local Government Act 1999

1. Contract Procurement Rules and Financial Regulations means the Council's current Contract Procurement Rules and Financial Regulations contained in the Council's Constitution.
2. Contract Term means the period commencing on the Commencement Date and ending on the Expiry Date or on earlier termination of this Agreement in accordance with Clauses 23.
3. Council Assets means any equipment, systems or facilities provided to the Supplier to be used directly or indirectly with the supply of services.
4. Council Representative means the person appointed by the Council with authority to act on behalf of the Council in relation to all matters set out in, or in connection with, this Agreement and whose identity is set out in Schedule 3 (Services Specification).
5. Data Subject has the meaning given in the Data Protection Act 1998.
6. Data Subject Access Request means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his Personal Data.

Defaults means any failure by the Supplier to meet it obligations under this Agreement.

Default Notice means the notice served by the Council to the Supplier detailing a breach of the Supplier's obligations under the Agreement and requiring the Supplier to remedy such breach upon the terms and within the times stipulated in such notice.

Documents means the documents produced by the Supplier for the purposes of this Agreement.

Dispute Resolution Procedure means the procedure for resolving Disputes set out in Clause 11.

1. DPA means the Data Protection Act 1998 and any other applicable Laws relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any applicable Relevant Authority in relation to such Laws.
2. EIR means the Environmental Information Regulations 2004 and any subordinate legislation from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such Regulations.
3. Expiry Date means the completion of the delivery of the Services or such other date specified in the Services Specification.
4. FOIA means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to the Freedom of Information Act 2000.
5. Force Majeure Event means war, natural flood, exceptionally adverse weather, strike or lockout (other than a strike or lockout which is limited to the Supplier's Personal), civil disorder, act of God, power cuts or delays or other wholly exceptional events outside the control of the parties which could not have been reasonably foreseen or avoided, but excluding:
	1. any industrial action occurring within the Supplier
	2. any industrial action occurring from any sub-contractor for which the Supplier is responsible for

which directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement.

1. Guidance means any applicable guidance or directions with which the Supplier is bound to comply.
2. Information means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form).
3. Law means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply.
4. Lead Consultant means a nominated employee or agent of the Supplier who is appointed to be the lead consultant pursuant to Clause 6.1
5. Losses means all losses, liabilities, damages, demands, charges, costs, and expenses (including legal and other professional charges and expenses) litigation, settlement, judgement interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise and the term Loss shall be construed accordingly.
6. Necessary Consents means all approvals, certificates, authorisations, permissions, licences, permits and consents necessary from time to time for the performance of the Services.
7. Personal Data means personal data (as defined in the DPA) which is Processed by the Supplier on behalf of the Council pursuant to or in connection with this Agreement.
8. Process has the meaning given to that term under the Data Protection Act 1998 and Processed and Processing shall be construed accordingly.
9. Prohibited Act means:
	1. to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
		1. induce that person to perform improperly a relevant function or activity; or
		2. reward that person for improper performance of a relevant function or activity;
	2. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
	3. an offence:
		1. under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
		2. under legislation or common law concerning fraudulent acts; or
		3. defrauding, attempting to defraud or conspiring to defraud the Council; or
	4. any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
10. Recipient has the meaning set out in Clause 16.1.
11. Records means all records which the Supplier is required by law to maintain.
12. Regulated Activity in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
13. Required Professional Standard means the exercise of that degree of skill, care and diligence which would reasonably and ordinarily be expected from a skilled and experienced professional provider of services similar to the Services to a customer like the Council, such provider seeking to comply at all times with their contractual and regulatory obligations and complying with applicable Laws;
14. Relevant Authority means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.
15. Relevant Requirements means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.
16. Representatives means the Council Representative and the Supplier Representative and Representative shall mean either one of them as the context so requires.
17. Request for Information shall have the meaning set out in the FOIA or the EIR as relevant.
18. Required Insurance means the insurances to be taken out by the Supplier in accordance with Clause 19.1.
19. Service Users means users who consume or benefit from the Services.
20. Services means the whole of the services or any of them to be provided by the Supplier as identified in the Services Specification pursuant to this Agreement from time to time.
21. Services Specification means the specification of the Services set out in Schedule 3 (Services Specification).
22. Subcontract means any contract or agreement between the Supplier and any third party whereby that third party agrees to provide the Supplier all or any part of the Services.
23. Subcontractors means any third party with whom the Supplier enters into a Subcontract.
24. Successor Body shall have the meaning given to that term in Clause 34.
25. Supplier Personnel means all directors, officers and employees of the Supplier engaged in the performance of the Supplier's obligations under this Agreement.
26. Supplier's Quotation/Tender means the Supplier's response to the Council's invitation to quote or tender for the supply of the Services.
27. Supplier Representative means the person appointed by the Supplier with authority to act on behalf of the Supplier in relation to all matters set out, or in connection with, in this Agreement whose identity is set out in Schedule 1.
28. Transparency Code shall have the meaning given to that term in Clause 16.8.
29. Value Added Tax or VAT means value added tax as provided for in the Value Added Tax Act 1994 or such similar tax which may be imposed in place from time to time.
30. Working Day any day other than a Saturday, Sunday or public holiday in England.
31. - Services Specification

|  |  |
| --- | --- |
| **Detailed description of the Services** |  |
| **Timetable for delivery of the Services****Expiry Date** |  |
| **Contract Standard** |  |
| **Lead Consultant** |  |
| **Council Representative**  | **Name:****Contact address:****Email:****Telephone no:** |

1. - Charges

*[Insert details of the Charges to be paid by the Council to the Supplier as specified in any quotation or tender]*

|  |  |
| --- | --- |
| Executed as a deed byaffixing the common seal of **EPPING FOREST DISTRICT COUNCIL**in the presence of:  | [COMMON SEAL] |
| .................................................Attesting Officer  |  |

|  |  |
| --- | --- |
| Executed as a deed by **[INSERT NAME OF THE SUPPLIER]**  acting by [ ] a director and [ ], a director |  |
|  | .............................................. |
|  | Director |
|  | ...............................Director /Secretary |

 Leg 770

1. Please delete as appropriate [↑](#footnote-ref-1)
2. This must be deleted if the Supplier is a Sole Trader [↑](#footnote-ref-2)
3. Delete if not applicable and insert “not used” to save renumbering and delete the Definition “Contract Procurement Rules and Financial Regulations” in Schedule 2.

If applicable, send copy of the Councils Contract Procurement Rules and Financial Regulations which can be obtained from the intranet with this Agreement [↑](#footnote-ref-3)
4. Only applicable for contracts over £20,000 in whole including any extensions. Delete and insert “not used” to save renumbering [↑](#footnote-ref-4)
5. Send copy of the Safeguarding Policy with this Agreement which can be obtained from the Intranet [↑](#footnote-ref-5)
6. Send copy of the Transparency Code Policy with this Agreement which can be obtained from the intranet [↑](#footnote-ref-6)
7. Send copy of the H&S Policy with this Agreement which can be obtained from the Intranet [↑](#footnote-ref-7)
8. Send copy of the Environmental Policy which can be obtained from the Intranet with this Agreement [↑](#footnote-ref-8)
9. Send copy of the Equalities Policy which can be obtained from the Intranet with this Agreement [↑](#footnote-ref-9)
10. Send copy of the Whistleblowing Policy which can be obtained from the Intranet with this Agreement [↑](#footnote-ref-10)
11. For the section ‘Entire Agreement’, select one of the options above and delete the other option. Agreement will automatically renumber. [↑](#footnote-ref-11)