

Schedule 2 Conditions of Contract

1. Definitions and Construction

- 1.1 In these conditions except where the context otherwise requires the following expressions shall have the following meanings:

“Agreement” means the agreement to be entered into by the Council and the Service Provider in the form of Schedule 6 of the Instructions to Tenderers

“Bank Holiday” has the meaning given by the Banking and Financial Dealings Act 1971 section 1;

“Commencement Date” means 1st April 2017;

“Conditions” means these conditions;

“Contract” means the Agreement these Conditions, the Specification, the Tender Form, and the Schedules and Annexes to them (if any);

“Contract Period” has the meaning given in Condition 3

“Council” means Purbeck District Council

“Default” means any breach of the obligations of the Service Provider under the Contract or any default, act, omission or negligence of the Service Provider or Staff in connection with or in relation to the subject matter of the Contract;

“Enactments” means directives, statutes, regulations, orders, instruments, national and governmental codes of practice and best practice guidelines or other similar instruments as the same may be amended, replaced, or re-enacted by any subsequent directive, statute, regulation, order, instrument, code or guidelines and references to any statute shall also include any secondary legislation made under it;

“Intellectual Property Rights” means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, semi-conductor topography rights, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off;

‘Review Dates’ means the first, second and third anniversaries of the Commencement Date as the context requires;

“Services” means the services to be provided as set out in the Specification;

“Service Provider” means the contractor chosen to carry out the services in this contract.

“Service Provider’s Representative” means the representative of the Service Provider authorised and notified in writing to the Council to act on behalf of the Service Provider for the purposes of the Contract;

“Staff” means all persons engaged by the Service Provider to perform the Contract or used in the performance of the Contract including the Service Provider’s employees, agents and sub-contractors;

“Working Day” means Monday to Friday inclusive other than Bank Holidays and any other public holidays.

- 1.2 Words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction.
- 1.3 The headings and titles in this Contract are for ease of reference only and shall not be taken into account in its construction or interpretation.
- 1.4 The expression **“person”** used in this Contract shall include (without limitation) any individual, partnership, local authority, or incorporated or unincorporated body.
- 1.5 The expression **“including”** means including without limitation or prejudice to the generality of any preceding description, defining term, phrase or word(s) and “include” shall be construed accordingly;
- 1.6 Words importing the masculine gender include the feminine gender and words in the singular include the plural and vice versa.
- 1.7 The Contract represents the entire understanding between the Service Provider and the Council in relation to the subject matter of the Contract and supersedes all prior contracts, undertakings, representations and negotiations whether oral or written except that nothing this condition shall exclude or restrict liability for fraudulent or fundamental misrepresentations.

2. Appointment of the Service Provider and Provision of the Services

- 2.1 The Service Provider will provide the Services (and any modifications authorised by or under the Contract) for the Contract Period and will otherwise perform its obligations under the Contract in accordance with the Contract.
- 2.2 The Service Provider will provide the Services and perform its obligations under the Contract in a proper, skilful and professional manner in accordance with all relevant professional and technical standards and the service standards specified in the Specification.

- 2.3 The Contractor shall employ sufficient staff in and about the provision of the Services and shall ensure that every person so employed is at all times properly and sufficiently qualified, competent, careful, skilled, experienced, instructed and supervised as the case may be with regard to the Services to be provided.

3. Contract Period

- 3.1 This Contract shall extend for a period of 3 years from the Commencement Date and shall not be terminable by the Council or the Service Provider within that period otherwise than in accordance with this Contract.
- 3.2 The Council may extend the Contract Period at their option by giving six month's written notice to the Service Provider or such lesser period of notice as may be agreed with the Service Provider for a further period as the Council may determine, not exceeding 1 year, but otherwise upon the same terms and conditions set out in this Contract except that any Review shall be extended to a fourth Review Date being the fourth anniversary of the Commencement Date.
- 3.3 The option shall be exercisable as follows:
- 3.3.1 the Council shall give notice of its wish to extend the Contract Period to the Service Provider not less than six months before the third anniversary of the Commencement Date;
- 3.3.2 the Service Provider shall serve a counter-notice on the Council accepting the extension or not accepting the extension within 6 weeks of the Council's notice;
- 3.3.3 a failure to serve a notice or a counter-notice shall be taken as indicating that the Council does not wish to exercise the option, or that the Service Provider does not wish the Contract to be extended, as the case may be.

4. Payment and method of payment

- 4.1 The Service Provider shall make the payments due to the Council quarterly in arrears by bank transfer or such other method as may be agreed with the Council.
- 4.2 Unless otherwise agreed payment will be made by the Service Provider within 14 days after the end of the relevant quarter.

5. VAT

- 5.1 Sums payable by the Service Provider under this Contract are exclusive of VAT.

6. Monitoring and review of performance

- 6.1 The Service Provider shall maintain comprehensive and accurate records of all advertising opportunities in the provision of the Services and shall provide the Council with access to such records upon request.
- 6.2 The Service Provider shall provide and supply to the Council at no cost to the Council such other information or access to such information as the Council may reasonably request as to the provision of the Services and the performance of the Service Provider's obligations under the Contract and render the Council all reasonable assistance in connection with their monitoring and review.
- 6.3 Meetings shall be carried out on a 6 monthly basis at a time to be agreed between the Council and the Service Provider.

7. Changes to Services and variation to contract

- 7.1 Without prejudice to any other of these Conditions, no omission from, addition to or variation of this Contract shall be valid or of any effect unless it is agreed in writing and signed by the Supervising Officer and by a duly authorised representative of the Contractor
- 7.2 Save for an omission, addition or variation agreed pursuant to Condition 7.1 of these Conditions any provision inconsistent with these Conditions contained in any other document or in any oral agreement is agreed to be void and of no effect

8. Confidentiality

The Service Provider shall not, and shall ensure that Staff shall not use, or disclose any confidential material provided by the Council pursuant to the Contract save as may be agreed by the Council or required by law.

9. Copyright & Intellectual Property Rights

- 9.1 The Service Provider warrants and represents that neither the performance of the Contract nor the provision or use of the Services will in any way constitute an infringement or other violation of any Intellectual Property Rights of any third party.

- 9.2 Before utilising any material in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights, the Service Provider shall procure the necessary licences to enable the Council to use such material at all times for the Council's purposes at no cost to the Council.
- 9.3 All Intellectual Property Rights in any specifications, instructions, plans, drawings, patents, patterns, models, designs, reports or other material:
- 9.3.1 furnished to or made available to the Service Provider by the Council shall remain the property of the Council;
- 9.3.2 prepared by or for the Service Provider for use, or intended for use, in relation to the performance of the Contract shall belong to the Council and the Service Provider shall not, and shall procure that Staff shall not (except when necessary for the implementation of the Contract) without prior approval of the Council, use or disclose any such Intellectual Property Rights. The Service Provider shall, at its cost and expense, do all such further acts and things and execute or procure the execution of all such documents as the Council may reasonably require, for the purpose of transferring any such Intellectual Property Rights to the Council.
- 9.4 The Service Provider shall not assume any Intellectual Property Rights in any documentation or material provided by the Council to the Service Provider under this Contract.
- 9.5 All Intellectual Property rights in any information contained in the Service Provider's information database that relates to:
- 9.5.1 this Contract;
- 9.5.2 the contaminated land sites made good under this Contract;
- 9.5.3 any contaminated land sites in the administrative area the Council that were made good under the previous contract or that are awaiting remediation,
- shall be the property of the Council to which it relates. The Service Provider shall, at the end of the Contract Period or upon termination of the Contract for any reason, return all such information to the Council.

10. Insurance

10.1 Without prejudice to Condition 11, the Service Provider shall at all times maintain insurance cover with a reputable company to include:

10.1.1 public liability insurance to a limit of £10,000,000 (ten million pounds);

10.1.2 employers liability insurance to a limit of £10,000,000 (ten million pounds);

10.2 The Service Provider shall supply to the Council's Representatives annually and at any other time within 14 days of request a copy of all insurance policies, cover notes, premium receipts or such other documents as may satisfy the Council that such insurance is in place.

10.3 The Service Provider shall immediately notify the Council if any claim or demand is made or action brought against the Service Provider for infringement or alleged infringement of any Intellectual Property Rights in connection with the performance of the Contract.

11. Indemnity

The Service Provider shall indemnify and keep indemnified for the length of the contract the Council from and against any and all claims, demands, proceedings, actions, damages, costs, expenses, loss and liability arising from a Default, save to the extent that it arises from any default or negligence of the Council, a Council Member or its/their employees provided always, for the avoidance of doubt, that this does not extend to any loss of profits suffered by the Council.

12. No agency

12.1 Nothing in this Contract shall be construed as creating a legal partnership or a relationship of principal and agent between the Council and the Service Provider and the Service Provider shall not at any time or in any circumstances take any action so as to bind (or purport to bind) the Council and nor shall the Service Provider hold itself out as having authority to bind the Council and shall ensure that Staff do not hold themselves out likewise.

12.2 Status of the Service Provider

12.2.1 During the Contract Period the Service Provider shall be an independent contractor and not an employee of the Council. In such capacity, the Service Provider shall bear exclusive responsibility for the payment of his national insurance contributions as a self-employed person and for discharge of any income tax and VAT liability arising out of remuneration for his work performed by him under this Contract.

- 12.2.2 For the avoidance of doubt the Service Provider shall not be subject to directions from the Council as to the manner in which he performs his work.

13. Statutory Obligations

The Service Provider shall, in the provision of the Services and the performance of its obligations under the Contract, comply with all Enactments.

14. Data Protection

- 14.1 The Service Provider shall in connection with the provision of the Services and the performance of its obligations under the Contract comply with the Data Protection Act 1998.
- 14.2 Where processing personal data (as defined in the Data Protection Act 1998) received from the Council, the Service Provider shall act only on the Council's instructions and shall take all appropriate technical and organisational security measures to protect against any unauthorised or unlawful processing or accidental loss or destruction of or damage to the personal data and the Service Provider shall provide to the Council such information as the Council may reasonably require to satisfy itself that the Service Provider is complying with the obligations referred to in this Condition.
- 14.3 The Service Provider must exercise its best endeavours to ensure the accuracy of any personal data processed in carrying out its obligations under the Contract and that where necessary such personal data is kept up to date.
- 14.4 The Service Provider shall take such steps as may be necessary to afford the Council at no cost to the Council access to personal data which is reasonably required by the Council in connection with any of its statutory functions and for any purpose connected with the Council's rights and obligations under the Contract.
- 14.5 The Service Provider shall co-operate with any and all Council requests and supply to it/them all information properly required in connection with any request received by the Council under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 and shall supply all such information and documentation at no cost to the Council within 7 days of a request.
- 14.6 The Service Provider acknowledges that in responding to requests received by the Council under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, the Council will be entitled to provide information relating to the Contract.

15. Equal Opportunities

- 15.1 The Service Provider shall not in relation to the employment of persons for the purposes of providing the Services or in relation to the provision of the Services to any person unlawfully discriminate within the meaning of any Enactment relating to discrimination whether in relation to race, gender, religion, disability or otherwise.
- 15.2 The Service Provider shall have due regard to the need to eliminate unlawful racial discrimination to promote equality of opportunity and to promote good relations between different racial groups and shall where reasonably requested by the Council assess and monitor its policies and practices so as to impact on the promotion of race equality, and report on this to the Council.
- 15.3 The Service Provider shall in the provision of the Services comply with the duties imposed by the Equality Act 2010 and the requirement not to discriminate against persons with a protected characteristic contained in that Act as if it were a public authority for the purposes of that Act.

16. Assignment and Sub-Contracting/Substitution

- 16.1 The Service Provider shall not assign the benefit or advantage of the Contract in whole or in part.
- 16.2 The Service Provider shall not sub-contract the provision of the Services to any person without the prior written consent of all of the Council's Representative(s) and should such consent be given it shall not relieve the Service Provider from any liability or obligation under the Contract and the Service Provider shall be responsible for the acts, omissions, defaults or neglect of any sub-contractor and its agents or employees in all respects as if they were the acts, omissions, defaults or neglect of the Service Provider.
- 16.3 Where the Council gives permission for the provision of Services under this Contract to be sub-contracted, it shall be on the condition that:
 - 16.3.1 the contract between the Service Provider and the sub-contractor shall require the sub-contractor to maintain at all times with a reputable insurance company public liability and employers liability insurance at the levels set out in Condition 10.1 above;
 - 16.3.2 where the sub-contract is for professional services, the sub-contractor shall also be required to maintain at all times with a reputable insurance company professional indemnity insurance to the level set out in Condition 10.1 above;
 - 16.3.3 where the sub-contract is for the delivery of goods or the carrying out of non-professional services or works, the sub-contractor shall also be required to maintain at all times with a reputable insurance company product liability, contractors all-risks or such other insurance policy as may be appropriate to the sub-contract, at a level

sufficient to safeguard the Service Provider and the Council from all reasonably foreseeable risks associated with a breach of the sub-contract by the sub-contractor;

- 16.3.4 the sub-contract shall recognise the Council's interest in its proper performance and shall allow the Council to enforce its terms if necessary directly against the sub-contractor under the Contracts (Rights of Third Parties) Act 1999; and
- 16.3.5 the contract between the Service Provider and the sub-contractor will include terms which requires payment to be made by the Service Provider to sub-contractor within a period not exceeding 30 days from receipt of a valid invoice; and which provide that undue delay in considering and verifying an invoice is not sufficient justification for failing to regard it as valid and undisputed.

17. Termination - Notice

- 17.1 The Council shall have the right to terminate the Contract on any anniversary of the Commencement Date by giving not less than six months' written notice to the Service Provider.
- 17.2 If the Council finds that advertising space is not being marketed or sold, in accordance with the Council's advertising principles or the expected frequency, the Council reserves the right to terminate the contract giving 1 months' notice, and seek advertising services elsewhere

18. Termination – Corruption, Insolvency, Change of Control, False Information, Suspension

- 18.1 The Council may terminate the Contract by notice in writing such notice to have effect from the date specified in it and recover from the Service Provider the amount of any loss resulting from such termination if:
 - 18.1.1 the Service Provider shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the Contract or any other contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Council or the like acts shall have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Service Provider); or
 - 18.1.2 in relation to any contract with the Council, the Service Provider or any person employed by it or acting on its behalf shall have committed any offence under the Bribery Act 2010 shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

18.2 If the Service Provider:

- 18.2.1 commits a Default and the Service Provider has not remedied the Default to the satisfaction of the Council within 20 days or such other period which may be specified by the Council after issue of a written notice specifying the Default and requesting it to be remedied; or
- 18.2.2 commits a material Default which is not capable of remedy; or
- 18.2.3 commits a Default on a persistent or repeated basis; or
- 18.2.4 is an individual or a firm and a petition is presented for the Service Provider's bankruptcy or a criminal bankruptcy order is made against the Service Provider or any partner in the firm, or the Service Provider or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or an administrator is appointed to manage the Service Provider's affairs; or;
- 18.2.5 is a company, and the company passes a resolution for its winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation the company or any person gives or files notice of intention to appoint an administrator or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
- 18.2.6 is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 18.2.7 ceases to carry on its business or disposes of all its assets or ceases to carry on a substantial part of its business or disposes of a substantial part of its assets which in the reasonable opinion of the Council would materially affect the delivery of the Services; or
- 18.2.8 undergoes a change of control and for this purpose where the Service Provider is a company, there is a change of control if the majority of shares carrying a right to vote in the Service Provider or its holding company are acquired by a person who is not at the Commencement Date of the Contract a major shareholder ("holding company" having the same meaning as in section 736 of the Companies Act 1985) save that if there is a change of control which is only a change from one subsidiary company to another ("subsidiary company" having the same meaning as in section 736 of

the Companies Act 1985) then that shall be deemed not to be a change of control for the purposes of this Condition,

Then in any such circumstances the Council may, without prejudice to any other rights or remedies terminate the Contract by notice in writing, such notice to have effect from the date specified in it.

18.3 Where the Contract is terminated under this Condition:

18.3.1 the Council shall be entitled to recover from the Service Provider the amount of any loss resulting from the termination including, but not limited to, the cost of arranging alternative provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period (calculated on the basis that there had been no early termination of the Contract); and

18.3.2 the Council shall cease to be under any obligation to make any payment until the costs, loss and/or damage resulting from or arising out of the termination of the Contract have been calculated and the Council shall then be entitled to deduct from any sum or sums due from the Council to the Service Provider under the Contract the amount of such costs, loss and/or damage.

18.4 The Council shall be entitled to carry out, or engage a third party to carry out, the Services or any of them on a temporary basis where the Service Provider is in Default and the Service Provider shall be liable for any costs incurred by the Council.

18.5 The rights of the Council under this Condition 18 are in addition to and without prejudice to any other rights or remedies which the Council may have whether against the Service Provider or any other person.

19. Recovery on End of Contract

19.1 The expiry or termination of this Contract for whatever reason shall not affect any provisions of the Conditions capable of surviving or operating in the event of termination of the Contract and termination of this Contract shall be without prejudice to the rights and remedies of one party against the other party.

19.2 For the avoidance of doubt, Condition 19.1 shall apply where:

19.2.1 this Contract is terminated by the Council.

19.2.2 the Council breaks the Contract under Condition 17;

19.2.3 the Council decides not to extend the Contract under Condition 3.

19.3 On expiry or termination of the Contract howsoever arising, the Service Provider shall forthwith deliver to the Council upon request:

19.3.1 all or any records of the Council and any records, documentation, drawings, data or other information produced or received for the purposes of the Contract and stored on whatever medium;

19.3.2 all the property issued or made available to the Service Provider by the Council (including, but not limited to, materials, clothing, equipment, vehicles, documents, information, access keys) in its possession or under its control or in the possession or under the control of any Staff.

20. Conflict of Interest

20.1 The Service Provider shall use its best endeavours to avoid being engaged in any activity where there is, or is likely to be, an actual or reasonably perceivable conflict with the interests, aims or objectives of the Council further to this Contract.

20.2 The Service Provider shall as soon as practicably possible disclose to the Council any such potential conflict and shall comply with any reasonable measures required by the Council to mitigate such conflict.

20.3 The Council agrees that this shall not restrict the Service Provider from being involved in other activities and holding other interests.

21. Publicity and Advertising

The Service Provider shall not advertise nor seek any publicity or respond to press enquiries relating to the Services and shall refer all enquiries to the Council's Representative.

22. Service of Notices

22.1 Any demand, notice or other communication required to be given hereunder shall be sufficiently served if served personally on the addressee or if sent by prepaid first class recorded delivery post or facsimile transmission to the registered office or last known address of the Service Provider where notice is required to the Service Provider and to Westport House, Worgret Road, Wareham, Dorset, BH20 4PP where notice is required unless otherwise agreed.

22.2 Where any demand, notice or other communication is required to be given to the Council it shall be sent to the Council's own address.

22.3 Any demand, notice or other communication falling under Condition 22.2 that is delivered to any address shall not be deemed to have been received by the Council until five Working Days after the usual time of receipt set out in Condition 22.4.

- 22.4 Any such communication as referred to in Conditions 22.1 and 22.2 shall be deemed to have been made two Working Days from the date of posting (if by letter) and if by facsimile transmission on the date of such transmission where it is a Working Day save that transmissions received after 4 p.m. shall be deemed to have arrived on the following Working Day and transmissions received on a day which is not a Working Day on the first Working Day after the transmission.

23. Force Majeure

Neither the Service Provider nor the Council shall be liable for breach of their obligations under the Contract to the extent that such breach is caused by any act of God, natural flood, fire (save where such fire is due to the negligence or fault of the Service Provider), lightning or earthquake, war, military operations, act of terrorism or riot, but nonetheless each party shall use all reasonable endeavours to perform its obligations under the Contract.

24. Severance

If any of these Conditions shall become or shall be declared by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way impair or affect any other provisions all of which shall remain in full force and effect.

25. The Contracts (Rights of Third Parties) Act 1999

The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract, but this does not affect any rights which are available apart from this Act.

26. Waiver

- 26.1 The failure of the Council or the Service Provider to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 26.2 No waiver shall be effective unless it is communicated to either the Council or the Service Provider in writing.
- 26.3 A waiver of any right or remedy arising from a breach of Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

27. Disputes and Arbitration

- 27.1 A dispute relating to the provision of the Services, or payments which cannot be resolved in the first instance between the Service Provider's Representative and the Council's Representative within a month shall be referred to a senior manager of the Council and the Service Provider.

- 27.2 Nothing in this Condition shall prejudice the right of either party to apply to the court for interim relief to prevent the violation by the other party of any proprietary interest or any breach of that party's obligations.
- 27.3 Services to be provided under the Contract shall not cease or be delayed by this dispute resolution procedure.
- 27.4 If any dispute cannot be resolved between the Service Provider and the Council within a month of referral as set out in Condition 27.1 then at the instance of the Service Provider or the Council it will be referred to mediation in accordance with the Centre for Effective Dispute Resolution's ("CEDR") Model Mediation Procedure.
- 27.5 To initiate the mediation, either party may give notice in writing to the other requesting mediation in accordance with this Condition. The initiating party shall send a copy of such request to CEDR.
- 27.6 If there is any issue on the conduct of the mediation (including as to the nomination of the mediator) upon which the parties cannot agree within a reasonable time, CEDR will, at the request of either party, decide the issue.
- 27.7 If the dispute is not resolved within 90 days of the initiation of the mediation, or if either party will not participate in the mediation either party may commence proceedings.

28. Applicable Law and Jurisdiction

The Contract shall be governed by and interpreted in accordance with English law and shall be subject to the jurisdiction of the courts of England and Wales.