

GOODS/SERVICES AGREEMENT

Between

Borough Council of King's Lynn and West Norfolk

And

[INSERT SUPPLIER NAME]

For

[INSERT CONTRACT NAME/DETAILS]

Order Form

1. Contract Reference	[Insert Council's contract reference number, if any]		
2. Council	Borough Council of King's Lynn & West Norfolk		
3. Supplier	[Insert Supplier's name, registered address (if registered), and registration number (if registered)]		
	Together referred to as "the Parties"		
4. The Contract	<p>This Contract between the Council and the Supplier is for the supply of Deliverables.</p> <p>The Supplier shall supply the Deliverables described below on the terms set out in this Order Form and the attached contract conditions ("Conditions") and [Annex/Annexes].</p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in the Conditions.</p>		
5. Specification	As set out in Annex 1		
6. Start Date	[Insert Day Month Year]		
7. Expiry Date	[Insert Day Month Year]		
8. Extension Period	<p>[Insert Not applicable]</p> <p>[Or insert The Council may extend the Contract for a period of up to [X Months] by giving not less than [X Working Days]' notice in writing to the Supplier prior to the Expiry Date. The Conditions of the Contract shall apply throughout any such extended period.]</p>		
9. Charges	<p>The Charges for the Deliverables shall be as set out [Guidance: Select as relevant and consider whether indexation may be appropriate]</p> <ul style="list-style-type: none"> • [below [Guidance: fill in below] / • in Annex 2 – Charges (Optional) / • in the Supplier's tender as set out in Annex 3 – Supplier Tender (Optional)]. 		
10. Progress Meetings and Progress Reports	<p>[Insert Not applicable]</p> <p>[Or insert</p> <ul style="list-style-type: none"> • The Supplier shall attend progress meetings with the Council every [] commencing from the date of this Contract • The Supplier shall provide the Council with progress reports every [] commencing from the date of this Contract 		
11. Address notices for	<p>In accordance with clause 26, all notices under the Contract shall be in writing and will be served by e-mail unless it is not practicable to do so.</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>[Insert name and e-mail address]</p> <p>Attention: [Insert title]</p> <p>Address: [Insert address]</p> </td> <td style="width: 50%; vertical-align: top;"> <p>[Insert name and e-mail address of Supplier]</p> <p>Attention: [Insert title]</p> <p>Address: [Insert address]</p> </td> </tr> </table>	<p>[Insert name and e-mail address]</p> <p>Attention: [Insert title]</p> <p>Address: [Insert address]</p>	<p>[Insert name and e-mail address of Supplier]</p> <p>Attention: [Insert title]</p> <p>Address: [Insert address]</p>
<p>[Insert name and e-mail address]</p> <p>Attention: [Insert title]</p> <p>Address: [Insert address]</p>	<p>[Insert name and e-mail address of Supplier]</p> <p>Attention: [Insert title]</p> <p>Address: [Insert address]</p>		

12. Key Staff	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Key Staff Role:</td> <td style="width: 33%;">Key Staff Name</td> <td style="width: 33%;">Contact Details:</td> </tr> <tr> <td colspan="3" style="background-color: yellow;"> [List names of any Key Staff required to deliver the Contract, and their contact details – see clause 7.4 of the Conditions for further details] </td> </tr> </table>	Key Staff Role:	Key Staff Name	Contact Details:	[List names of any Key Staff required to deliver the Contract, and their contact details – see clause 7.4 of the Conditions for further details]		
Key Staff Role:	Key Staff Name	Contact Details:					
[List names of any Key Staff required to deliver the Contract, and their contact details – see clause 7.4 of the Conditions for further details]							

Signed for and on behalf of the Supplier	Signed for and on behalf of the Council
Name: [Insert name] [Insert job title]	Name: [Insert name] [Insert job title]
Date:	Date:
Signature:	Signature:

[Guidance: Where appropriate, this Order Form may be signed electronically by both Parties.]

CONDITIONS

1 DEFINITIONS USED IN THE CONTRACT

1.1 In this Contract, unless the context otherwise requires, the following words shall have the following meanings:

"Audit"	<p>the Council's right to:</p> <ul style="list-style-type: none">(a) verify the accuracy of the Charges and any other amounts payable by the Council under the Contract (including proposed or actual variations to them in accordance with the Contract);(b) verify the costs of the Supplier (including the costs of all Subcontractors and any third-party suppliers) in connection with the provision of the Deliverables;(c) verify the Supplier's and each Subcontractor's compliance with the applicable Law;(d) identify or investigate actual or suspected breach of the Contract, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Council shall have no obligation to inform the Supplier of the purpose or objective of its investigations;(e) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Subcontractors or their ability to provide the Deliverables;(f) obtain such information as is necessary to fulfil the Council's obligations to supply information for administrative purposes;(g) review any books of account and the internal contract management accounts kept by the Supplier in connection with the Contract;(h) carry out the Council's internal and statutory audits and to prepare, examine and/or certify the Council's annual and interim reports and accounts;
"Beneficiary"	a Party having (or claiming to have) the benefit of an indemnity under this Contract;
"Council Cause"	Any Material Breach by the Council of its obligations or any other material default, act, omission, negligence or statement of the Council, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Council is liable to the Supplier.
"Charges"	the charges for the Deliverables as specified in the Order Form;
"Claim"	any claim which it appears that the Council is, or may become, entitled to indemnification under this Contract;
"Conditions"	these terms and conditions of contract;
"Confidential Information"	<p>all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which</p> <ul style="list-style-type: none">(a) is known by the receiving Party to be confidential;(b) is marked as or stated to be confidential; or(c) ought reasonably to be considered by the receiving Party to be confidential;

<p>"Contract"</p>	<p>the contract between the Council and the Supplier which is created by the Supplier's counter signing the Order Form and includes the cover letter (if used), Order Form, these Conditions and the Annexes [include as necessary: Invitation to Tender, Tender Response, Tender Clarifications];</p> <p>If there is any conflict, the following order of precedence applies:</p> <ul style="list-style-type: none"> (a) This Order Form (b) The Conditions (c) The Annexes in equal order of precedence
<p>"Contract Year"</p>	<ul style="list-style-type: none"> (a) a period of 12 months commencing on the Start Date; and (b) thereafter a period of 12 months commencing on each anniversary of the Start Date, <p>with the final Contract Year ending on the expiry or termination of the Term;</p>
<p>"Controller"</p>	<p>has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;</p>
<p>"Crown Body"</p>	<p>the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;</p>
<p>"Deliverables"</p>	<p>the Goods, Services, and/or software to be supplied under the Contract as set out in the Order Form;</p>
<p>"Force Majeure Event"</p>	<p>any event, circumstance, matter or cause beyond the reasonable control of the Party seeking to claim relief in respect of a Force Majeure Event (the "Affected Party") which prevent or materially delay the Affected Party from performing its obligations under the Contract, not limited to:</p> <ul style="list-style-type: none"> (a) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; (b) acts of a Crown Body, local government or regulatory bodies; (c) fire, flood or any disaster; or (d) an industrial dispute affecting a third party for which a substitute third party is not reasonably available <p>but excluding:</p> <ul style="list-style-type: none"> (a) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain; (b) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and (c) any failure of delay caused by a lack of funds, <p>and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party;</p>
<p>"Insolvency Event"</p>	<p>in respect of a person:</p> <ul style="list-style-type: none"> (a) if that person is insolvent;

	<p>(b) where that person is a company, LLP or a partnership, if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction);</p> <p>(c) if an administrator or administrative receiver is appointed in respect of the whole or any part of the person's assets or business;</p> <p>(d) if the person makes any composition with its creditors; or</p> <p>(e) takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;</p>
"Key Staff"	any persons specified as such in the Order Form or otherwise notified as such by the Council to the Supplier in writing, following agreement to the same by the Supplier;
"Law"	a reference to a Law includes a reference to that Law as modified, amended, extended, consolidated, replaced or re-enacted from time to time before or after the date of this Contract and any prior or subsequent legislation under it, and also includes regulatory policy, 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;
"Material Breach"	<p>a single serious breach or a number of breaches or repeated breaches (whether of the same or different obligations and regardless of whether such breaches are remedied).</p> <p>For the avoidance of doubt, a failure to achieve substantive KPI's in the Contract shall constitute a breach for the purposes of this definition.</p>
"Minor Default"	A single failure to perform the Deliverables not meeting the level of a Material Breach
"Order Form"	the order form signed by the Council and the Supplier printed above these Conditions;
"Prescribed Person"	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as stated from time to time by the UK Government (currently at https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies)
"Purchase Order Number" or "PO Number"	the Council's unique number relating to the order for Deliverables to be supplied by the Supplier to the Council in accordance with the Contract;
"Rectification Plan"	<p>the Supplier's plan (or revised plan) to rectify its Material Breach which shall include:</p> <p>(a) full details of the Material Breach that has occurred, including a root cause analysis;</p> <p>(b) the actual or anticipated effect of the Material Breach; and</p> <p>(c) the steps which the Supplier proposes to take to rectify the Material Breach (if applicable) and to prevent such Material Breach from recurring, including timescales for such steps and for the rectification of the Material Breach (where applicable);</p>

"Request For Information"	has the meaning set out in the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);
"Services"	the services to be supplied by the Supplier to the Council under the Contract;
"Specification"	the specification for the Deliverables to be supplied by the Supplier to the Council (including as to quantity, description and quality) as specified in the Order Form;
"Sub-Contract"	any contract or agreement (or proposed contract or agreement), other than the Contract, pursuant to which a third party: <ul style="list-style-type: none"> (a) provides the Deliverables (or any part of them); (b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or (c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);
"Subcontractor"	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
"Supplier Staff"	any individual engaged, directly or indirectly, or employed by the Supplier or any Subcontractor, in the management or performance of the Supplier's obligations under this Contract;
"Term"	the period from the Start Date to the Expiry Date as such period may be extended in accordance with row 8 of the Order Form or terminated in accordance with the Contract;
"Working Day"	a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

2 WHAT NEEDS TO BE DELIVERED

2.1 All Deliverables

2.1.1 The Supplier must provide Deliverables:

- a. in accordance with the Specification, the tender [in Annex 3 – Supplier Tender (*Optional*) (where applicable)] and the Contract;
- b. using reasonable skill and care and good industry practice;
- c. on the dates agreed; and
- d. that comply with all Law.

2.2 [Goods] [Delete where appropriate]

2.2.1 [The Supplier must provide Deliverables with a warranty of at least 90 days (or longer where the Supplier offers a longer warranty period) from Delivery against all obvious defects.]

2.2.2 The Supplier transfers ownership of the Goods on completion of Delivery or payment for those Goods, whichever is earlier.

2.2.3 Risk in the Goods transfers to the Council on Delivery, but remains with the Supplier if the Council notices damage following Delivery and lets the Supplier know within 3 Working Days of Delivery.

2.2.4 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.

2.2.5 The Supplier must Deliver the Goods on the date and to the location specified in the Order Form, during the Council's working hours (unless otherwise specified in the Order Form).

2.3 [Services] [Delete where appropriate]

- 2.3.1 The Supplier must ensure all Services, and anything used to deliver the Services, are of good quality and free from defects.
- 2.3.2 On completion of the Services, the Supplier is responsible for leaving the Council's premises in a clean, safe and tidy condition and making good any damage that it has caused to the Council's premises or property, other than fair wear and tear.
- 2.3.3 The Council is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

3 PRICING AND PAYMENTS

- 3.1 In exchange for the Deliverables, the Supplier must invoice the Council for the charges in the Order Form.
- 3.2 All Charges:
 - 3.2.1 exclude VAT, which is payable on provision of a valid VAT invoice; and
 - 3.2.2 include all costs and expenses connected with the supply of Deliverables.
- 3.3 The Council must pay the Supplier the charges:
 - 3.3.1 within 30 days beginning with the day on which an invoice is received by the Council in respect of the sum, or
 - 3.3.2 if later, the day by which the payment falls due in accordance with the invoice, subject to the invoice being verified as valid and undisputed.
- 3.4 A Supplier invoice is only valid if it:
 - 3.4.1 includes the minimum required information set out in Section 88(7) of the Procurement Act 2023;
 - 3.4.2 includes all appropriate references including the Purchase Order Number and other details reasonably requested by the Council; and
 - 3.4.3 includes a detailed breakdown of Deliverables which have been delivered.
- 3.5 If there is a dispute between the Parties as to the amount invoiced, the Council shall pay the undisputed amount. The Supplier shall not suspend the provision of the Deliverables unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 10.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 30.
- 3.6 The Council may retain or set-off payment of any amount owed to it by the Supplier under this Contract or any other agreement between the Supplier and the Council if notice and reasons are provided.
- 3.7 The Supplier must ensure that all Subcontractors are paid, in full:
 - 3.7.1 within 30 days beginning with the day on which an invoice is received by the Council in respect of the sum; or
 - 3.7.2 if later, the date by which the payment falls due in accordance with the invoice, subject to the invoice being verified as valid and undisputed.

4 THE COUNCIL'S OBLIGATIONS TO THE SUPPLIER

- 4.1 Subject to clause 4.2 if the Supplier fails to comply with the Contract as a result of a Council Cause:
 - 4.1.1 the Council cannot rely on that failure to comply to terminate the Contract under clause 10.2;
 - 4.1.2 the Supplier is entitled to reasonable and proven additional expenses and to relief from liability under this Contract;
 - 4.1.3 the Supplier is entitled to additional time reasonably needed to deliver the Deliverables; and
 - 4.1.4 the Supplier cannot suspend the ongoing supply of Deliverables.

- 4.2 Clause 4.1 applies subject to the Supplier:
- 4.2.1 giving notice to the Council within 10 Working Days of becoming aware;
 - 4.2.2 demonstrating to the reasonable satisfaction of the Council that the failure only happened because of the Council Cause; and
 - 4.2.3 mitigating the impact of the Council Cause.

5 RECORD KEEPING AND REPORTING

- 5.1 The Supplier must ensure that suitably qualified representatives attend Progress Meetings with the Council as per the Order Form.
- 5.2 The Supplier shall provide Progress Reports as specified in the Order Form. The Progress Reports shall contain sufficient information to enable the Council to assess whether the Contract is being duly performed.
- 5.3 The Supplier shall, in addition to providing Progress Reports, provide reasonable information to the Council on request at any time relating to the performance of the Contract and/or the delivery of the Services.
- 5.4 The Supplier must keep and maintain full and accurate records and accounts on matters to do with the Contract for 7 years after the date of expiry or termination of the Contract and in accordance with the UK GDPR or the EU GDPR as the context requires.
- 5.5 The Supplier acknowledges that the Council may from time to time be subject to external Audit. The Supplier shall reasonably co-operate at its own cost with requests from the Council for information to support any such Audit and the auditor.

6 PERFORMANCE MANAGEMENT [DELETE IF CONTRACT FOR GOODS]

Minor Defaults

- 6.1 If either the Council notifies the Supplier, or the Supplier believes, that the Supplier has or is likely to commit a Minor Default, the Supplier must:
- a. immediately tell the Council and give reasons; and
 - b. within 5 working days, propose corrective action together with a deadline for completing the corrective action at its own cost (a **Minor Default Plan**).
- 6.2 The Council may at its reasonable discretion accept the proposed Minor Default Plan or require it to be amended within 5 days of receipt.
- 6.3 Failure to carry out the Minor Default Plan shall constitute a repeated breach of the Contract for the purposes of the definition of "Material Breach".

Material Breaches and Rectification Plans

- 6.4 If the Supplier commits a Material Breach:
- a. the Supplier must notify the Council of the Material Breach within 3 Working Days of the Supplier becoming aware of it.
 - b. Upon such notice the Council may request that the Supplier provide a Rectification Plan within 10 Working Days of the Council's request alongside any additional documentation that the Council requires. The Council may at its reasonable discretion accept the proposed Rectification Plan or require it to be amended. Once such Rectification Plan is agreed between the Parties (without the Council limiting its rights) the Supplier must immediately start work on the actions in the Rectification Plan at its own cost.
 - c. If the Rectification Plan cannot be agreed by the Council, or if the Council considers that the Rectification Plan is not successfully remedying the Material Breach, the Council may terminate the Contract. For the avoidance of doubt, the Council's agreement to any Rectification Plan shall not constitute a waiver of its rights to immediate termination.

Financial Stability

- 6.5 If the Council, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract then the Council may require that the Supplier provide to the Council (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract and the Supplier will make changes to such plan as reasonably required by the Council and once it is agreed then the Supplier shall act in accordance with such plan and report to the Council on demand; and
- 6.6 If the Supplier fails to provide a plan or fails to agree any changes which are requested by the Council or fails to implement or provide updates on progress with the plan, the Council may terminate the Contract immediately on the same basis as for Material Breach (or on such date as the Council notifies) and the consequences of termination in clause 10.3 shall apply.

7 SUPPLIER STAFF

- 7.1 The Supplier Staff involved in the performance of the Contract must:
- 7.1.1 be appropriately trained and qualified; and
 - 7.1.2 comply with all conduct requirements when on the Council's premises.
- 7.2 The Supplier indemnifies the Council against all claims brought by any person employed or engaged by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.
- 7.3 The Council indemnifies the Supplier against all claims brought by any person employed or engaged by the Council caused by an act or omission of the Council or any of the Council's employees, agents, consultants and contractors.
- 7.4 The Supplier shall use those persons nominated (if any) as Key Staff in the Order Form or otherwise notified as such by the Council to the Supplier in writing, following agreement to the same by the Supplier to provide the Deliverables and shall not remove or replace any of them unless:
- 7.4.1 requested to do so by the Council or the Council approves such removal or replacement (not to be unreasonably withheld or delayed);
 - 7.4.2 the person concerned resigns, retires or dies or is on parental or long-term sick leave; or
 - 7.4.3 the person's employment or contractual arrangement with the Supplier or any Subcontractor is terminated for material breach of contract by the employee.
- 7.5 The Supplier shall ensure that no person who discloses that they have a conviction that is relevant to the nature of the Contract, relevant to the work of the Council, or is of a type otherwise advised by the Council (each such conviction a "**Relevant Conviction**"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a disclosure and barring service check or otherwise) is employed or engaged in the provision of any part of the Deliverables.

8 RIGHTS AND PROTECTION

- 8.1 The Supplier warrants and represents that:
- 8.1.1 it has full capacity and authority to enter into and to perform the Contract;
 - 8.1.2 the Contract is entered into by its authorised representative;
 - 8.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;
 - 8.1.4 it has notified the Council of any circumstances that could be relevant to deciding if the Supplier might be "excluded" or "excludable" under the Procurement Act 2023 or equivalent Law;
 - 8.1.5 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;
 - 8.1.6 it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and
 - 8.1.7 it is not impacted by an Insolvency Event.

- 8.2 The warranties and representations in this clause are repeated each time the Supplier provides Deliverables under the Contract.
- 8.3 The Supplier indemnifies the Council against each of the following:
- 8.3.1 wilful misconduct of the Supplier, any of its Subcontractor and/or Supplier Staff that impacts the Contract; and
 - 8.3.2 non-payment by the Supplier of any tax or National Insurance.
- 8.4 If the Supplier becomes aware of a representation or warranty made in relation to the Contract that becomes untrue or misleading, it must immediately notify the Council.
- 8.5 All third-party warranties and indemnities covering the Deliverables must be assigned for the Council's benefit by the Supplier for free.

9 INTELLECTUAL PROPERTY RIGHTS ("IPR")

- 9.1 The Supplier gives the Council a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable worldwide licence to use, copy and adapt the Supplier's existing IPR to enable the Council and its sub-licensees to both:
- 9.1.1 receive and use the Deliverables; and
 - 9.1.2 use the new IPR created under the Contract.
- 9.2 The termination or expiry of the Contract does not terminate any licence granted under this clause 9.
- 9.3 Any new IPR created under the Contract is owned by the Council. The Council gives the Supplier a royalty-free, non-exclusive, non-transferable licence to use, copy, and adapt any existing IPRs and the new IPR which the Supplier reasonably requires for the purpose of fulfilling its obligations during the Term and commercially exploiting the new IPR developed under the Contract. This licence is sub-licensable to a Subcontractor for the purpose of enabling the Supplier to fulfil its obligations under the Contract, and in that case the Subcontractor must enter into a confidentiality undertaking with the Supplier on the same terms as set out in clause 144 (What you must keep confidential).
- 9.4 Neither Party has the right to use the other Party's intellectual property rights, including any use of the other Party's names, logos or trademarks, except as provided in this clause 9 or otherwise agreed in writing.

10 ENDING THE CONTRACT

Ending the Contract without alleging any breach

- 10.1 The Council has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than 45 days' written notice, and if it is terminated this clause 10 applies.

When the Council can end the Contract immediately

- 10.2 If any of the following events happen, the Council has the right to immediately terminate this Contract by issuing a termination notice in writing to the Supplier:
- 10.2.1 there's a Supplier Insolvency Event;
 - 10.2.2 the Supplier is in Material Breach of the Contract;
 - 10.2.3 there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre-approved by the Council in writing;
 - 10.2.4 the Supplier or its affiliates embarrass or bring the Council into disrepute or diminish the public trust in them; or
 - 10.2.5 the Supplier fails to comply with its legal obligations in the fields of environmental, social or employment Law when providing the Deliverables.

In these circumstances the consequences of termination in clause 10.3 shall apply.

What happens if the Contract ends

- 10.3 Where the Council terminates the Contract under 10.2 all of the following apply:
- 10.3.1 the Council's payment obligations under the terminated Contract stop immediately;
 - 10.3.2 accumulated rights of the Parties are not affected;
 - 10.3.3 the Supplier must promptly (i) return the Data and (ii) delete all copies other than Data (i) that is Personal Data in respect of which the Supplier is a Controller; (ii) in respect of which the Supplier has rights to hold the Data independently of this Contract; and (iii) where required to retain copies by Law;
 - 10.3.4 the Supplier must promptly return any of the Council's property provided under the Contract; and
 - 10.3.5 the Supplier must repay to the Council all the Charges that it has been paid in advance for Deliverables that it has not provided as at the date of termination or expiry.

When the Supplier can end the Contract and what happens when the contract ends (Council and Supplier termination)

- 10.4 The Supplier can issue a reminder notice if the Council does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Council fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice.
- 10.4.1 Where the Council terminates the Contract in accordance with clause 10.1 or the Supplier terminates the Contract under clause 10.4
 - a. the Council must promptly pay all outstanding charges incurred by the Supplier;
 - b. the Council must pay the Supplier reasonable committed and unavoidable losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated; and
 - c. clauses 10.3.1 – 10.3.5 apply.
 - 10.4.2 The Supplier also has the right to terminate the Contract in accordance with clause 19 (Force Majeure).

Partially ending and suspending the Contract

- 10.5 Where the Council has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Council suspends the Contract it can provide the Deliverables itself or buy them from a third party.
- 10.5.1 The Council can only partially terminate or suspend the Contract if the remaining parts of it can still be used to effectively deliver the intended purpose.
 - 10.5.2 The Parties must agree (in accordance with clause 22) any necessary variation required by clause 10.5, but the Supplier may not either:
 - a. reject the variation; or
 - b. increase the Charges,
 - c. except in each case where the right is to partial termination.
 - 10.5.3 The Council can still use other rights available, or subsequently available to it if it acts on its rights under this clause 10.5.

Ongoing obligations after expiry or termination of the Contract

- 10.6 The following clauses survive the expiry or termination of the Contract: 5 (Record Keeping), 8 (Rights & Protection), 11 (Limitation of Liability), 13 (Data Protection), 14 (Confidentiality), 15 (Requests for Information), 27 (Dealing with Claims) 30 (Disputes) and 31 (Governing Law) and any clauses which are expressly or by implication intended to continue.

11 HOW MUCH YOU CAN BE HELD RESPONSIBLE FOR

- 11.1 Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 125% of the Charges paid or payable to the Supplier.
- 11.2 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.
- 11.3 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

12 OBEYING THE LAW, POLICIES AND PROCEDURES

- 12.1 The Supplier, in connection with provision of the Deliverables:
 - 12.1.1 is expected to meet and have its Subcontractors meet the standards set out in the Supplier Code of Conduct:
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1163536/Supplier Code of Conduct v3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1163536/Supplier_Code_of_Conduct_v3.pdf)
as such Code of Conduct may be updated from time to time, and such other sustainability requirements as set out in the Order Form. The Council also expects to meet this Code of Conduct;
 - 12.1.2 must support the Council in fulfilling its Public Sector Equality duty under section 149 of the Equality Act 2010;
 - 12.1.3 must comply with the model contract terms contained in (a) to (l) of Annex C of the guidance to PPN 009 (Tackling Modern Slavery in Government Supply Chains), as such clauses may be amended or updated from time to time; and
- 12.2 The Supplier indemnifies the Council against any losses, claims, liabilities, costs, expenses, proceedings or otherwise brought against it that results from any default by the Supplier in respect of Law.
- 12.3 The Supplier shall indemnify the Council against any as a result of the Supplier's non-compliance with the Law.
- 12.4 In addition to compliance with clause 12.1, when performing their obligations under the Contract, the Supplier must also comply with the Council's current:
 - 12.4.1 Health and Safety policy while at the Council's premises; and
 - 12.4.2 Environmental policy.
- 12.5 The Council must make Supplier Staff aware of any policies within this clause.

13 DATA PROTECTION AND SECURITY

- 13.1 Data Protection Legislation: (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018.
- 13.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 13.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the data controller and the Contractor is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 13.4 Without prejudice to the generality of clause 13.2, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data to the Contractor for the duration and purposes of this agreement.

- 13.5 Without prejudice to the generality of clause 13.2, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this agreement:
- 13.5.1 process that Personal Data only on the written instructions of the Council unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to process Personal Data (Applicable Laws). Where the Contractor is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Contractor shall promptly notify the Council of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Contractor from so notifying the Council;
 - 13.5.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that the availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - 13.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - 13.5.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - a. the Council or the Contractor has provided appropriate safeguards in relation to the transfer;
 - b. the data subject has enforceable rights and effective legal remedies;
 - c. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - d. the Contractor complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
 - 13.5.5 assist the Council, at the Council's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultation with supervisory authorities or regulators;
 - 13.5.6 notify the Council without undue delay on becoming aware of a Personal Data Breach;
 - 13.5.7 at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - 13.5.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 13.
- 13.6 The Council does not consent to the Contractor appointing any third party processor of Personal Data under this agreement

14 WHAT YOU MUST KEEP CONFIDENTIAL

- 14.1 Subject to clause 14.2 each Party must:
- 14.1.1 keep all Confidential Information it receives confidential and secure;
 - 14.1.2 not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract; and

- 14.1.3 immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 14.2 A Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:
- 14.2.1 where disclosure is required by applicable Law if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
 - 14.2.2 if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;
 - 14.2.3 if the information was given to it by a third party without obligation of confidentiality;
 - 14.2.4 if the information was in the public domain at the time of the disclosure;
 - 14.2.5 if the information was independently developed without access to the disclosing Party's Confidential Information;
 - 14.2.6 on a confidential basis, to its auditors or for the purposes of regulatory requirements;
 - 14.2.7 on a confidential basis, to its professional advisers on a need-to-know basis; and
 - 14.2.8 to a relevant government agency or regulatory body where the recipient Party has reasonable grounds to believe that such reporting is appropriate.
- 14.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.
- 14.4 The Council may disclose Confidential Information in any of the following cases:
- 14.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Council;
 - 14.4.2 if the Council (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions; and
- 14.5 For the purposes of clauses 14.2 to 14.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in this clause.
- 14.6 The Supplier must not make any press announcement or publicise the Contract or any part of it in any way, without the prior written consent of the Council and must take all reasonable endeavours to ensure that Supplier Staff do not either.

15 WHEN YOU CAN SHARE INFORMATION

- 15.1 The Supplier must tell the Council within 48 hours if it receives a Request For Information.
- 15.2 In accordance with a reasonable timetable and in any event within 5 Working Days of a request from the Council, at no additional cost, the Supplier must give the Council full co-operation and information needed so the Council can comply with any Request For Information.
- 15.3 Any such co-operation and/or information from the Supplier shall be provided at no additional cost.

16 INSURANCE

- 16.1 At all times during the term of the Contract and for six years following termination, the Supplier shall maintain insurance at the level specified in the Contract, or if no such level is specified, to an adequate and appropriate extent to cover its potential liabilities to the Council under this Contract.

17 INVALID PARTS OF THE CONTRACT

- 17.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract.

17.2 The provisions incorporated into the Contract are the entire agreement between the Parties. The Contract replaces all previous statements, or agreements whether written or oral. No other provisions apply.

18 OTHER PEOPLE'S RIGHTS IN THE CONTRACT

18.1 No third parties may use the Contracts (Rights of Third Parties) Act ("**CRTPA**") to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

19 CIRCUMSTANCES BEYOND YOUR CONTROL

19.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:

19.1.1 provides written notice to the other Party; and

19.1.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

19.2 Any failure or delay by the Supplier to perform its obligations under the Contract that is due to a failure or delay by an agent, Subcontractor and/or Supplier Staff will only be considered a Force Majeure Event if that third party is itself prevented from complying with an obligation to the Supplier due to a Force Majeure Event.

19.3 Either Party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously and the consequences of termination in clause 10 shall apply.

19.4 Where a Party terminates under clause 19.3:

19.4.1 each Party must cover its own losses; and

19.4.2 clause 10.3 applies.

20 RELATIONSHIPS CREATED BY THE CONTRACT

20.1 The Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

21 GIVING UP CONTRACT RIGHTS

21.1 A partial or full waiver or relaxation of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party.

22 TRANSFERRING RESPONSIBILITIES

22.1 The Supplier cannot assign, novate or in any other way dispose of the Contract or any part of it without the Council's written consent.

22.2 The Council can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Council.

22.3 When the Council uses its rights under this clause the Supplier must enter into a novation agreement in the form that the Council specifies.

22.4 The Supplier is responsible for all acts and omissions of the Supplier Staff as if they were its own.

23 LOCAL GOVERNMENT REORGANISATION

23.1 Upon the transfer of the Council's functions, assets and liabilities under legislation implementing Local Government Reorganisation, this Contract shall be automatically novated to and be binding on the successor authority or authorities without the need for further consent by any Party.

24 SUPPLY CHAIN

- 24.1 The Supplier cannot sub-contract the Contract or any part of it without the Council's prior written consent. The Supplier shall provide the Council with the name of any Subcontractor the Supplier proposes to engage for the purposes of the Contract. The decision of the Council to consent or not will not be unreasonably withheld or delayed. If the Council does not communicate a decision to the Supplier within 10 Working Days of the request for consent then its consent will be deemed to have been given. The Council may reasonably withhold its consent to the appointment of a Subcontractor if it considers that:
- 24.1.1 the appointment of a proposed Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
 - 24.1.2 the proposed Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
 - 24.1.3 the proposed Subcontractor employs unfit persons.
- 24.2 If the Council asks the Supplier for details about Subcontractors, the Supplier must disclose to the Council, on a confidential basis, the requested details of all such Subcontractors, provided such disclosure does not breach any confidentiality or data protection obligations owed to the Subcontractors.
- 24.3 The Supplier must exercise due skill and care when it selects and appoints Subcontractors.
- 24.4 At the Council's request, the Supplier must terminate any Sub-Contracts when the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under clause 10.2.
- 24.5 The Supplier is responsible for all acts and omissions of its Subcontractors and those employed or engaged by them as if they were its own.

25 CHANGING THE CONTRACT

- 25.1 Either Party can request a variation to the Contract which is only effective if agreed in writing and signed by both Parties. The Council is not required to accept a variation request made by the Supplier.

26 HOW TO COMMUNICATE ABOUT THE CONTRACT

- 26.1 All notices under the Contract shall be in writing and be served by e-mail unless it is not practicable to do so. An e-mail is effective at 9am on the first Working Day after sending unless an error message is received.
- 26.2 Notices to the Council or Supplier must be sent to their e-mail address (or address, where e-mail is not practicable) in the Order Form.
- 26.3 If it is not practicable for a notice to be served by e-mail in accordance with this clause, notices can be served by means of personal delivery or prepaid, next Working Day service providing proof of delivery. If either of these options are used to serve a notice, such notices are considered effective on the Working Day of delivery as long as they are delivered before 5:00pm on a Working Day. Otherwise, the notice is effective on the next Working Day.
- 26.4 This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

27 DEALING WITH CLAIMS

- 27.1 If a Beneficiary becomes aware of any Claim, then it must notify the Indemnifier as soon as reasonably practical.
- 27.2 At the Indemnifier's cost the Beneficiary must:
- 27.2.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim;
 - 27.2.2 give the Indemnifier reasonable assistance with the Claim if requested; and
 - 27.2.3 not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.

- 27.3 The Indemnifier must:
- 27.3.1 consider and defend the Claim diligently and in a way that does not damage the Beneficiary's reputation; and
 - 27.3.2 not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.

28 HEALTH AND SAFETY

- 28.1 The Supplier and the Council must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Council premises that relate to the performance of the Contract.

29 REPORTING A BREACH OF THE CONTRACT

- 29.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Council any actual or suspected breach of Law, of Material Breach of this Contract.
- 29.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach to the Council or a Prescribed Person.

30 RESOLVING DISPUTES

- 30.1 If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute by commercial negotiation.
- 30.2 If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, then the Parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction.
- 30.3 The Supplier cannot suspend the performance of the Contract during any dispute.

31 WHICH LAW APPLIES

- 31.1 This Contract and any issues or disputes arising out of, or connected to it, are governed by English law.

Annex 1 – Specification and KPIs

Annex 2 – Charges (*Optional*)

[Insert the charges document here if using/delete if not using or otherwise mark as "Not Used"]

Annex 3 – Supplier Tender (Optional)

[Insert the tender document here if using/delete if not using or otherwise mark as "Not Used"]

[Guidance: Please note that some parts of the tender documentation may not be appropriate for inclusion (e.g. customer testimonials), and it may be necessary to include any clarifications/updates so that the tender reflects the agreed position.]