

DATED ..... 2020

**DORSET COUNCIL**

and

**[INSERT NAME OF SUPPLIER]**

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**CONTRACT  
FOR THE PROVISION OF A  
WEB SITE, DESTINATION MANAGEMENT SYSTEM AND  
RELATED SUPPORT AND HOSTING FACILITIES**

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DRAFT

**THIS AGREEMENT** is made the                      day of

2020

**BETWEEN**

- (1) **DORSET COUNCIL** of South Walks House, South Walks Road, Dorchester, Dorset, DT1 1UZ (hereinafter referred to as the "Client"); and
- (2) **[INSERT NAME OF SUPPLIER]** a company registered in England and Wales under company number [insert company number], whose registered office is at [insert address] (hereinafter referred to as the "Supplier"),

each hereinafter referred to, individually, as the "Party", and, collectively, as the "Parties".

**WHEREAS** the Council is desirous that certain services should be provided by the Supplier in providing a web site, destination management system and related support and hosting facilities and the Supplier has been appointed to provide the required services

**NOW THIS AGREEMENT WITNESSETH** as follows: -

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 In this agreement unless the context otherwise requires the following expressions have the following meanings:-
  - 1.1.1 **"Agreement"** means this Agreement including the Schedules to it and any amendments made in accordance with this Agreement.
  - 1.1.2 **"Background"** means in respect of each Party the Intellectual Property Rights owned by or otherwise in the possession of that Party at the Commencement Date.
  - 1.1.3 **"Business Day"** means a day (other than a Saturday, Sunday or public holiday) on which banks in the United Kingdom are open for general non-automated business
  - 1.1.4 **"Change"** means any change to this Agreement initiated through Clause 23 (Change Control and Amendments to the Agreement) including but not restricted to any enhancement of the Services and/or any addition of any new services.
  - 1.1.5 **"Charges"** means the payments made to the Supplier hereunder for the performance of the Services.
  - 1.1.6 **"Client Data"** means all data provided directly or indirectly to the Supplier by any Dorset Local Authority Tourism Partner in connection with this Agreement (whether or not owned by the Dorset Local Authority Tourism Partner).
  - 1.1.7 **"Client's Funding"** means the full, allotted income assigned by a contributing local authority to the Client for a particular year for the delivery of the Services
  - 1.1.8 **"Commencement Date"** means the [insert date].
  - 1.1.9 **"Confidential Information"** means all information (whether written, oral or in electronic form) concerning the business and affairs of a Party that the other Party obtains or receives as a result of the discussions leading up to or the entering into or the performance of this Agreement.

- 1.1.10 **“Data Protection Legislation”** means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
- 1.1.11 **“Data Subject”** is as defined in the Data Protection Legislation.
- 1.1.12 **“Default”** means any material breach of the obligations of either Party (including but not limited to fundamental breach or breaches of a fundamental term) or any material default, negligent or wilful act or omission of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other.
- 1.1.13 **“Disaster”** means any event or circumstance that causes: (a) the complete or a material partial loss, non-availability or corruption of any Client Data; and/or (b) the complete or a material partial unavailability or abnormal functioning of one or more Services (but excluding planned outages).
- 1.1.14 **“Dorset Tourism Partner”** means any additional Dorset public bodies who are admitted as a Dorset Tourism Partner in accordance with Clause 5.3.
- 1.1.15 **“Foreground”** means all:
- (a) Client Data and the Intellectual Property Rights in the Client Data; and
  - (b) other Intellectual Property Rights and documentation and literature produced by the Supplier on behalf of the Client arising or created directly as a result of the performance of the Services,
- but specifically excludes Background or methods, formulae, techniques, processes, software, systems and or programs devised, designed or prepared by or on behalf of or licensed to (other than pursuant to this Agreement) the Supplier
- 1.1.16 **“Future Service Provider”** means each and every service provider who shall provide any service equivalent to any of the Services after expiry or termination of this Agreement.
- 1.1.17 **“Good Industry Practice”** shall be in relation to any undertaking and any circumstance, the exercise of such reasonable care, skill, diligence, prudence, foresight and judgement as would reasonably be expected from a skilled and competent person engaged in the same type of undertaking under the same or similar circumstances.
- 1.1.18 **“Intellectual Property Rights”** means any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world and whether existing now or arising at any time in the future together with all or any goodwill relating or attached thereto.
- 1.1.19 **“Personal Data”** is as defined in the Data Protection Legislation.

- 1.1.20 **“Processor”** is as defined in the Data Protection Legislation.
- 1.1.21 **“Quarter”** means any one of the consecutive periods of three (3) consecutive months, the first such period commencing on the date of this Agreement.
- 1.1.22 **“Service Commencement Date”** means the date on which a specific Service is to commence, as specified in Schedule 1 (Services and Charges).
- 1.1.23 **“Service Desk Software”** means the software used by the Supplier’s support team to conduct their operation.
- 1.1.24 **“Service Levels”** means the service levels set out in Schedule 2 (Service Level Agreements) in respect of each Service.
- 1.1.25 **“Support Request”** means any call raised by the Client to the Supplier’s support team through the Service Desk Software.
- 1.1.26 **“Services”** means the services which are the subject of this Agreement as set out in Schedule 1.
- 1.1.27 **“Software”** means any software (including but not restricted to any related data or any database technology together with all documentation and user guides supplied in any medium with such software) which is made available to the Client or any Dorset Local Authority Tourism Partner by the Supplier pursuant to or in connection with this Agreement.
- 1.1.28 **“Sub-Contractor Breakage Costs”** means losses that have been or will be reasonably and properly incurred by the Supplier as a direct result of the termination of this Agreement (or any Service), but only to the extent that such losses are incurred (a) in connection with the Agreement and cannot reasonably be avoided or reduced by the Supplier; and (b) pursuant to a sub-contract entered into by the Supplier and a third party for the sole purpose of providing the Services under this Agreement and/or any other agreement with a Dorset Local Authority Tourism Partner entered into pursuant to this Agreement (including but not limited to any sub-contract for hosting services and/or any software licence and/or any software support services).
- 1.1.29 **“Term”** means the period of time during which this Agreement is in effect, the same being more particularly described in Clause 2 of this Agreement.
- 1.1.30 **“UK Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- 1.1.31 **“VAT”** means value added tax or any other tax of a similar nature.
- 1.1.32 **“Virus or Viruses”** means software which is designed to:-
- (a) disrupt, disable, harm or impede operation; or
  - (b) impair operation based on the lapse of time

including but not limited to viruses, worms, time bombs, time locks, drop-dead devices, access codes, back doors or trap door devices.

- 1.2 In this Agreement (including the recitals) unless the context otherwise requires:-
- 1.2.1 Clause headings are for ease of reference only;
  - 1.2.2 References to clauses are to clauses and schedules in this Agreement;
  - 1.2.3 In this Agreement where the context so permits, words importing the masculine gender shall include the feminine and neuter genders and vice versa, and words importing the singular number shall include the plural number and vice versa;
  - 1.2.4 Any reference to a person includes a company, corporation, partnership or unincorporated association;
  - 1.2.5 Reference to any party includes its successors in title, transferees and assignees;
  - 1.2.6 Where any of the schedules are inconsistent with the Clauses, the Clauses shall prevail.
  - 1.2.7 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the same as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof; and
  - 1.2.8 References to this Agreement or any other deed, agreement or document, are to the Agreement or, as the case may be, such other deed, agreement or document as the same may have been or may be from time to time amended, varied, altered, modified, supplemented or novated.

## **2 TERM OF THE AGREEMENT**

- 2.1 This Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with the provisions of this Agreement, for three years ("Initial Term"), when it shall terminate automatically without notice unless, no later than three months before the end of the Initial Term (or any Extended Term agreed under this clause), the parties agree in writing that the term of the Agreement shall be extended for a further twelve months (Extended Term). Unless it is further extended under this clause or terminated earlier in accordance with the provisions of this Agreement, the Agreement shall terminate automatically without notice at the end of an Extended Term.
- 2.2 This Agreement shall not exceed five years in duration and, subject to earlier termination, will determine automatically by expiry at the end of the second Extended Term.

## **3 SUPPLIER WARRANTIES**

- 3.1 The Supplier warrants, represents and undertakes as follows:
- 3.1.1 that it has full capacity and authority and all necessary consents to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;
  - 3.1.2 that the Client's use and operation of the Services (including use of the Software) shall not infringe any Intellectual Property Rights of any third party; and

- 3.1.3 that it has the full capacity and authority to grant the licences referred to in Clause 6.

#### **4 IMPLEMENTATION OF THE SERVICES**

- 4.1 Where relevant, the Supplier shall be responsible for demonstrating to the reasonable satisfaction of the Client that any Software installed in relation to any Service is capable of supporting such Service.

#### **5 THE SERVICES - GENERAL**

- 5.1 The Supplier shall provide each Service with effect from the Service Commencement Date. Where the Service is to be developed after the Service Commencement Date the Supplier shall deliver the Service in accordance with any agreed timescales.

- 5.2 The Supplier acknowledges that this Agreement is entered into by the Client on its own behalf and on behalf of its related Dorset Tourism Partners. The Supplier shall allow the Client's Dorset Tourism Partners to benefit from the Services but in no circumstances will the Supplier be obliged by a Dorset Tourism Partner to enter into an Agreement or to procure the provision of the Services on such person's behalf.

- 5.3 The Client may supplement the membership of the Dorset Tourism Partners with additional Dorset public bodies provided that it first obtains the consent in writing of the Supplier to the addition of further public bodies, such consent not to be unreasonably withheld or delayed.

- 5.4 The Supplier shall, on request from the Client, provide additional Services to the Client on the terms set out in this Agreement.

- 5.5 The Supplier shall:

5.5.1 provide the Services using all reasonable skill and care and in accordance with Good Industry Practice;

5.5.2 provide and maintain as necessary all infrastructure, equipment and staff required to provide the Services;

5.5.3 ensure that at all times its employees assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services;

5.5.4 perform the Services in accordance with and so as to meet all relevant Service Levels; and

5.5.5 carry out checks for Viruses using up-to-date industry standard Virus-scanning software (such checks shall be carried out at least as frequently as would be required in accordance with Good Industry Practice or otherwise as frequently as the Client may reasonably require).

- 5.6 The Supplier warrants that it has in place, and undertakes that it will continue during the Term to have in place, appropriate support systems to manage queries and problems raised by Dorset Local Authority Tourism Partners (and/or the users in such organisations).

- 5.7 The Supplier shall:



- 5.7.1 provide and maintain telephone number(s) and email address(es) by which users can access help desk facilities at times specified in the Service Level Agreement;
  - 5.7.2 log all calls and emails received in an appropriate system to include the time received, a severity code and a unique reference number to enable tracking throughout the resolution process;
  - 5.7.3 use the severity codes allocated to prioritise resolution of or response to the support request;
  - 5.7.4 provide an acknowledgement of the support request and a resolution of the problem according to the times specified in the Service Level Agreement; and
  - 5.7.5 provide reports on their performance against the Service Level Agreement at each quarterly meeting to review the Services under this Agreement.
- 5.8 Subject to Clause 5.9, the Supplier acknowledges that the supply of Software and Services to the Client enables the functioning of the Visit Dorset website. The Client is desirous of protecting its investment in the Software and Services and the Supplier therefore covenants with the Client that he shall not supply Software or Services to any third party that are the same as, or comparable to the Software and Services provided under this Agreement where the said Software and Services are intended for use by a third party in the creation or support of a pan-Dorset website which is (or intends to be) in competition with Visit Dorset.
- 5.9 The supply of Software and Services under this Agreement is not an exclusive arrangement and, for the avoidance of doubt, the Supplier is not prevented from supplying Software or Services to any third party that are the same as, or comparable to, the Software and Services provided under this Agreement where the supply:
- 5.9.1 is to an organisation outside of the County of Dorset; or
  - 5.9.2 is to individual towns or parishes within the County of Dorset in respect of a local website which does not compete with Visit Dorset

## **6 LICENCE OF THE SOFTWARE**

- 6.1 The Supplier hereby grants to the Client and shall grant to any Dorset Local Authority Tourism Partner on demand a non-exclusive, non-transferable, non-assignable licence to use the Software for the Term of this Agreement.
- 6.2 For the purposes of Clause 6.1, "use" of the Software shall be restricted to use during the Term by persons authorised by the Client or relevant Dorset Local Authority Tourism Partner, in the normal course of use of the Software for or in connection with the normal business purposes of the Client or such Dorset Local Authority Tourism Partner.
- 6.3 The Supplier warrants to the Client that it has the right to grant to the Client the licence set out in Clause 6.1.
- 6.4 The Client shall have no right to copy, adapt, reverse engineer, decompile, disassemble or modify the Software in whole or in part except as permitted by law.
- 6.5 The Client shall not allow the Software to become the subject of any charge, lien or encumbrance and shall not challenge the rights of the Supplier as owner of the Software or assert any claim or interest (or lend its support to any such challenge or claim) against the Supplier as owner of the Software.

## **7 LICENCE OF THE CLIENT DATA**

- 7.1 The Client hereby grants to the Supplier a non-exclusive licence to use the Client Data for the Term of this Agreement (subject to the provisions of this Clause 7).
- 7.2 For the purposes of Clause 7.1, "use" of the Client Data shall be restricted to use for the sole purpose of fulfilling its obligations under this Agreement.
- 7.3 The Client warrants to the Supplier that it has the right to grant to the Supplier the licence set out in Clause 7.1.
- 7.4 The Supplier shall have no right to copy the Client Data (except where reasonably necessary in order to enable the Supplier to provide the Services).
- 7.5 The Supplier shall be entitled to modify the Client Data, with the approval of the Client (such approval not to be unreasonably delayed or withheld) where modification is reasonably necessary in order to enable the Supplier to provide the Services.
- 7.6 The Supplier shall have no right to transfer or sell or otherwise exploit the Client Data.
- 7.7 The Supplier shall not allow the Client Data to become the subject of any charge, lien or encumbrance.

## **8 INTELLECTUAL PROPERTY RIGHTS**

- 8.1 As between the Parties, the Background shall remain the absolute unencumbered property of the owner of such rights at the Commencement Date. No Party will make any representation or do any act which may be taken to indicate that it has any right title or interest in or to the ownership or use of any of the Background of the other Party except under the terms of this Agreement, and each Party acknowledges that nothing contained in this Agreement shall give it any right, title or interest in or to the Background of the other Party save as granted hereby.
- 8.2 As between the Parties, the Foreground shall be the absolute unencumbered property of the Client. The Supplier shall not make any representation or do any act which may be taken to indicate that it has any right title or interest in or to the ownership or use of any of the Foreground except under the terms of this Agreement, and the Supplier acknowledges that nothing contained in this Agreement shall give it any right, title or interest in or to the Foreground save as granted hereby.
- 8.3 Subject to Clause 8.2, the Supplier shall retain ownership of all Intellectual Property Rights in and relating to all methods, formulae, techniques, processes, software, systems and programs devised, designed or prepared by or on behalf of or licensed to (other than pursuant to this Agreement) the Supplier for the purpose of or in connection with its provision of Services.

## **9 INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT**

- 9.1 Subject to the following sub-clauses each Party (Supplier) undertakes to defend the other (Client) from and against any claim or action that the possession, use, development, modification or maintenance of any Intellectual Property licensed to the Client by the Supplier pursuant to this Agreement ("Supplier IPR") (or any part thereof) infringes the Intellectual Property Rights of a third party (an "Infringement Claim") and shall fully indemnify and hold harmless the Client from and against any losses, damages, costs (including all reasonable

legal fees) and expenses incurred by or awarded against the Client as a result of or in connection with any such Infringement Claim.

9.2 The Client agrees that:

9.2.1 The Participant shall as soon as reasonably practicable notify the Supplier in writing of any Infringement Claim of which it has notice;

9.2.2 The Client shall not make any admission as to liability or compromise or agree to any settlement of any Infringement Claim without the prior written consent of the Supplier, which consent shall not be unreasonably withheld or delayed; and

9.2.3 The Supplier shall, on its written request and at its own expense, and on providing adequate security to the Client for any liability under the indemnity contained in Clause 9.1, be entitled to have the conduct of or settle all negotiations and litigation arising from any Infringement Claim and the Client shall, at the Supplier's request and expense, give the Supplier all reasonable assistance in connection with those negotiations and such litigation.

9.3 Without prejudice to Clause 9.1, if any Infringement Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Client, the Supplier may at its sole option and expense:

9.3.1 procure for the Participant the right to continue using the Supplier IPR (or any part thereof) in accordance with the terms of this Agreement; or

9.3.2 modify the Supplier IPR so that it ceases to be infringing; or

9.3.3 replace any Supplier IPR which is software with non-infringing software, provided that if Supplier modifies or replaces Supplier IPR, the modified or replacement Supplier IPR must comply with the warranty set out in Clause 6.3 as if this warranty had been given on the date on which such modification or replacement was made.

9.4 Notwithstanding the provisions of this Clause 9, the Supplier has no obligation with respect to any claim of infringement that is based upon or arises out of:

9.4.1 any modification by the Client to Supplier IPR or any part if the modification was not made by or on behalf of the Supplier or with the Supplier's prior written consent; or

9.4.2 the use or combination by the Client of the Supplier's IPR or any part with any hardware, products, data or other materials not specified, provided or approved by the Supplier;

9.4.3 the use by the Client of the Supplier's IPR or any part in violation of this Agreement;

9.4.4 the use by the Client of other than the most current release or version of The Supplier's IPR or any part (if such claim or infringement would have been prevented by the use of such release or version); or

9.4.5 the use by the Client of the Supplier's IPR or any part in any manner that breaches or is in contravention of any relevant law, regulation or requirement of any relevant regulatory authority.

9.5 The limitation of liability contained in Clause 10.2 shall not apply to the indemnity given in this Clause 9.

## **10 LIABILITY**

10.1 Neither Party excludes or limits liability to the other Party for death, personal injury, fraud or fraudulent misrepresentation.

10.2 Other than in respect of the payment of the Charges or any liability specifically excluded from this Clause, the aggregate liability of either Party to the other shall in no event exceed the aggregate total of the Charges paid and payable under this Agreement provided that, subject to such limitation of liability referred to in this Clause 10.2, nothing in this Clause 10 shall limit the rights of the Client to claim under any insurance effected pursuant to or in connection with Clause 11.3 (or to require the Supplier to pursue such a claim). The limitation in this Clause 10.2 is cumulative with all payments being aggregated to determine satisfaction of the limit. The existence of one or more claims will not enlarge the limit.

10.3 Subject to Clause 10.4, each Party shall be liable for the consequences of any breach of its obligations under this Agreement, including any injury to or death of any person, or loss of or damage to any property, except and to the extent that such consequences are caused or contributed to by the act, omission, default or negligence of the other Party.

10.4 Subject to Clause 10.5, neither Party will be liable to the other Party for any loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature.

10.5 Subject to clause 10.2 the provisions of Clauses 10.3 and 10.4 shall not be taken as limiting the right of the Client to claim from the Supplier for:

10.5.1 additional operational and administrative costs and expenses reasonably and necessarily incurred as a result of any breach by the Supplier of its obligations under this Agreement; and

10.5.2 expenditure or charges reasonably and necessarily incurred by the Client that are rendered unnecessary as a result of any breach by the Supplier of its obligations hereunder.

10.6 The provisions of this Clause 10 shall not be construed as limiting or excluding any liability of any Party in relation to the indemnities provided pursuant to Clause 9.1.

## **11 INDEMNITY AND INSURANCE**

11.1 The Supplier undertakes to indemnify the Client from and against any and all actions, costs (including reasonable professional costs), claims, demands, liabilities, losses and expenses directly incurred by or arising against the Client in connection with any of the following except in each case to the extent they are caused or contributed to by the act, omission, default or negligence of the Client:

11.1.1 any failure to comply with the terms of this Agreement caused by the negligence on the part of the Supplier, its sub-contractors, agents, or assignees;

11.1.2 any failure by the Supplier to comply with any applicable law, regulation, code of practice or regulatory requirement (whether of the United Kingdom or elsewhere); and

- 11.1.3 any claim against the Client by any third party as a result of any breach by the Supplier of this Agreement or any other statute or statutory provision relevant to the Agreement or the Services supplied under it.
- 11.2 The limitation of liability contained in Clause 10.2 shall apply to the indemnity given in Clause 11.1.
- 11.3 Before entering into this Agreement, the Supplier shall take out appropriate insurance (with a reputable insurer) and during the continuance of the Agreement and for twelve months thereafter it will maintain such insurance against all liabilities, payment, proceedings, costs, charges, damage, expenses, claims, and demands referred to in the Agreement (including public liability insurance and employers liability insurance of at least £5 million (five million) pounds sterling per claim, professional indemnity of at least £2 million (two million) pounds sterling per claim and product liability insurance of at least £1 million (one million) pounds sterling per claim) in relation to the Agreement and will when required produce to the Client an Insurance Broker's letter confirming that:
- 11.3.1 the policy, or policies of such insurance are in force;
- 11.3.2 all premiums due and payable have been paid; and
- 11.3.3 the policies do not incorporate any unusual restrictions or exclusions for policies of such type.

## **12 CHARGES AND PAYMENT**

- 12.1 In consideration of the performance of the Services in accordance with the terms of this Agreement, the Client shall pay the Charges in accordance with the procedure set out in this Clause 12.
- 12.2 The Charges shall be invoiced by the Supplier and be payable in accordance with the invoicing schedule contained in Schedule 1 (Services and Charges).
- 12.3 The Charges are exclusive of VAT. The Client shall pay the VAT on the Charges at the rate and in the manner prescribed by law, from time to time.
- 12.4 All amounts payable under this Agreement shall be made in pounds sterling. All payments shall be due thirty (30) days after the date on which the invoice is received. The Supplier may charge interest on late payment at a rate of 2% above the then current base rate of Barclays Bank PLC. Interest shall be calculated daily from the date of invoice until receipt of payment in cleared funds.
- 12.5 All prices stated herein shall be inclusive of travel expenses, overnight accommodation charges and other time and expense charges unless expressly approved in writing by the Client in advance, such approval to be entirely at the discretion of the Client.
- 12.6 Whenever under this Agreement any sum of money shall be recoverable from or payable by the Supplier, the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under this Agreement.
- 12.7 Exercise by the Client of its rights under this Clause shall be without prejudice to any other rights or remedies available to the Client under this Agreement.

12.8 In the event of any dispute in relation to the payment of any sum of money under this Agreement, neither Party shall be entitled to withhold payment of any undisputed element of the sums due.

### **13 DISASTER RECOVERY AND BUSINESS CONTINUITY**

13.1 The Supplier warrants that it has, and undertakes that it will continue to have, in place disaster recovery plans and business continuity plans (“Disaster Recovery Plans”) sufficient to mitigate the adverse impact of a Disaster on the provision of the Service and on the Client where the ability of the Supplier to provide the Services would otherwise be severely impaired.

13.2 The Supplier shall:

13.2.1 be responsible for the management and implementation of the Disaster Recovery Plans;

13.2.2 regularly (and not less than once in every twelve (12) months) review and maintain the Disaster Recovery Plans and, where reasonably possible or reasonably requested by the Client, develop improved or superior Disaster Recovery Plans for submission to the Client for approval;

13.2.3 regularly (and not less than once in every six (6) months) update and test the operability of the Disaster Recovery Plans (the updated Disaster Recovery Plans and the scope of the tests shall be agreed with the Client in advance) and shall carry out the first such test within two (2) months after the commencement of the Services;

13.2.4 certify to the Client, upon receipt of the Client’s written request, that the Disaster Recovery Plans are fully operational not less than once in every six (6) month period;

13.2.5 permit the Client to observe and audit the Disaster Recovery Plans, tests and test results; and

13.2.6 at the request and cost of the Client co-operate with and provide all necessary assistance to the Client when the Client tests or invokes its own business continuity/disaster recovery arrangements.

13.3 The Client shall provide all reasonable assistance and co-operation to the Supplier in the Supplier’s performance of its obligations in this Clause.

13.4 In the event of a Disaster:

13.4.1 the Supplier shall implement the procedures contained in Disaster Recovery Plans;

13.4.2 the Parties shall as soon as reasonably practicable convene an emergency management team to implement the Client’s prioritised requirements, to specify how the Disaster is to be managed and to ensure the communication is co-ordinated between the Parties and all relevant third parties.

### **14 ASSIGNMENT AND SUB-CONTRACTING**

14.1 The Supplier shall not transfer or assign directly or indirectly to any person or persons the whole or any portion of this Agreement without the written permission of the Client (such

consent not to be unreasonably withheld or delayed) except where such transfer or assignment is made to any company within its group or as part of a sale of all or substantially all of its business and assets.

- 14.2 The Supplier shall not sub-contract its obligations under this Agreement or any part of them without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed). The Supplier shall be responsible for the observance of all the provisions of this Agreement by its employees, agents and sub-contractors.
- 14.3 The Client may assign, sub-license, sub-contract or otherwise transfer any of its rights or obligations under this Agreement on notice to the Supplier but only:
- 14.3.1 with the written consent of the Supplier (such consent not to be unreasonably withheld or delayed); or
  - 14.3.2 to a successor or replacement organisation (in which circumstances the consent of the Supplier shall not be required)

## **15 TERMINATION OF THE AGREEMENT**

- 15.1 The Client may at any time (without prejudice to any other rights or remedies under the Agreement including other rights to terminate the Agreement) terminate this Agreement by notice in writing, taking effect immediately upon the receipt (or deemed receipt under Clause 24) of such notice by the Supplier in the event that the Supplier:
- 15.1.1 is in Default, where the Client has given written notice of the breach to the Supplier allowing, in circumstances where the breach is capable of remedy, thirty (30) days from receipt of the notice to rectify the breach and the breach or non-observance is not rectified in that time; or
  - 15.1.2 ceases to trade, threatens to cease trading; or
  - 15.1.3 any distress or execution is levied on its property or if it has a receiver, administrator, administrative receiver or manager appointed over the whole or any part of its assets, becomes insolvent, compounds or makes any arrangement with its creditors, commits any act of bankruptcy, is wound up or goes into liquidation, or if it suffers any analogous proceedings under foreign law; or
  - 15.1.4 causes or commits an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972 in relation to any Agreement with the Client; or
  - 15.1.5 has committed a fundamental breach of this Agreement which justifies immediate termination of the Agreement; or
  - 15.1.6 has, in relation to the aggregate value of any breaches of this Agreement, reached or exceeded the aggregate liability to the Client as determined by Clause 10.2.
- 15.2 In addition to the rights set out in Clause 15.1, in the event that the Client's Funding is materially reduced or revoked, the Client may, once the Initial Term is complete, terminate this Agreement or terminate one or more of the Services hereunder by service of notice in writing on the Supplier and such notice shall be given no later than three (3) months prior to the anniversary of the Commencement Date.

- 15.3 The Supplier (without prejudice to any other rights) may terminate this Agreement by notice in writing, taking effect immediately upon the receipt (or deemed receipt under Clause 24) of such notice by the Client in the event that:
- 15.3.1 any distress or execution is levied on its property or if it has a receiver, administrator, administrative receiver or manager appointed over the whole or any part of its assets, becomes insolvent, compounds or makes any arrangement with its creditors, commits any act of bankruptcy, is wound up or goes into liquidation, or if it suffers any analogous proceedings under foreign law; or
  - 15.3.2 the Client is in Default under this Agreement and, where the breach is capable of remedy, upon being given notice of that breach in writing the Client fails to remedy it within thirty (30) days; or
  - 15.3.3 the Client has committed a fundamental breach of this Agreement which justifies immediate termination of the Agreement; or
  - 15.3.4 the Client ceases to trade or threatens to cease trading; or
  - 15.3.5 has, in relation to the aggregate value of any breaches of this Agreement, reached or exceeded the aggregate liability to the Supplier as determined by Clause 10.2.

## **16 CONSEQUENCES OF TERMINATION**

- 16.1 Termination of this Agreement for any reason will be without prejudice to the rights, duties and liabilities of either Party accrued prior to termination.
- 16.2 On termination or expiry of this Agreement for any reason other than where this Agreement has been terminated by the Supplier under clause 15.4 the Supplier shall co-operate with and provide all reasonable assistance to the Client and any Future Service Provider to ensure the smooth transition of the Services to the Client or a Future Service Provider and without prejudice to the generality of this Clause 16.2 shall perform any Services (or any elements thereof) which are expressly or impliedly related to the end of the Agreement and the transition to new arrangements.
- 16.3 Nothing in this Clause 16 shall require the Supplier to provide any Confidential Information of the Supplier to a Future Service Provider.
- 16.4 Without prejudice to the obligations in Clause 16.2, on termination or expiry of this Agreement for any reason:
- 16.4.1 the Supplier shall as soon as reasonably possible either (a) deliver to the Client upon request all the Client's property (including but not limited to the Client Data, materials, documents, information, and other data) relating to or the subject matter of this Agreement in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors; or (b) where the Client has copies of such Client Data, materials, documents, information or other data, destroy all such property and certify destruction to the Client (in a form acceptable to the Client in its reasonable discretion). In default of compliance with this Clause 16.4.1 the Client may recover possession thereof and the Supplier hereby grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or sub-contractors during normal working hours and without causing unnecessary disruption to the Supplier to request delivery of all such items.



- 16.4.2 the Client shall return any documents in its possession or control which belong to the Supplier and the Client shall pay the Supplier all accrued and unpaid Charges
- 16.4.3 the licences granted under Clauses 6 and 7 of this Agreement shall automatically terminate without the necessity for any further notice.
- 16.5 Where at any time up to thirty (30) days after termination of this Agreement the Client has and produces evidence of reasonable grounds alleging that the Supplier retains any Client property that ought to have been returned to the Client in accordance with Clause 16.4 the Client may (on giving forty eight (48) hours written notice to the Supplier) visit any of the Supplier's premises or any other premises from which the Services were being delivered during normal working hours (and without thereby causing unnecessary disruption to the Supplier) to examine any of the Supplier's systems and records or the systems and records of any permitted suppliers or sub-contractors to ensure that the Supplier no longer retains any Client property that ought to have been returned to the Client in accordance with Clause 16.4.
- 16.6 The Clauses of this Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

## **17 MATTERS BEYOND A PARTY'S REASONABLE CONTROL**

- 17.1 If either Party is prevented from fulfilling its obligations under the Agreement by reason of any supervening event beyond its reasonable control the Party unable to fulfil its obligations shall immediately give notice of this to the other Party and shall do everything in its power to resume performance.
- 17.2 Neither Party shall be deemed to be in breach of its obligations under the Agreement in the circumstances set out in Clause 17.1, subject to the terms set out in that Clause.
- 17.3 If and when the period of such incapacity exceeds thirty (30) days, then the Parties shall meet to review the impact of the circumstances set out in Clause 17.1 and shall agree:
- 17.3.1 appropriate remedial activities or;
- 17.3.2 to conduct a further review of the impact of such circumstances after a further period of thirty (30) days.
- 17.4 In the event that such circumstances (set out in Clause 17.1 above) persist beyond the further review following an extended period (as referred to at 17.3.2 above) either Party may terminate this Agreement.
- 17.5 For the avoidance of doubt, any act or omission of any employee, agent or sub-contractor shall not be treated, for the purposes of Clause 17.1, as an event beyond the reasonable control of the respective Party (unless such act or omission is itself caused by an event which is beyond the reasonable control of the employee, agent or sub-contractor).

## **18 CONFIDENTIALITY AND PUBLICITY**

- 18.1 Subject to Clause 19 and 21 of this Agreement each Party shall, during the term of this Agreement and thereafter, keep confidential, and shall not use for its own purposes, nor without the prior written consent of the other disclose to any third party, any and all information of a confidential nature (including but not limited to trade secrets, pricing details and pricing structures and information of commercial value) that may become known to such Party from the other Party, and which relates to the other Party (Confidential Information), unless such

information is public knowledge or already known to such Party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Agreement, or subsequently comes lawfully into the possession of such Party from a third party.

- 18.2 The provisions of this Clause 18 shall remain in full force and effect for a period of 12 months following the expiry or termination of this Agreement.
- 18.3 All media releases, public announcements and public disclosures by either Party relating to this Agreement or its subject matter, including promotional or marketing material, shall be co-ordinated with the other Party and approved jointly by the Parties prior to release.

## **19 FREEDOM OF INFORMATION**

- 19.1 The Supplier acknowledges the Client's current and future obligations as a Public Client under the Freedom of Information Act 2000 (the "Act"), and any codes of practice and Best Practice guidance issued by the Government and the Information Commissioner.
- 19.2 The Supplier will facilitate the Client's compliance with the Client's obligations under the Act and comply with any reasonable request from the Client for that purpose. The Supplier notes particularly that the Client may be required to provide information relating to this Agreement or the Supplier to a person in order to comply with its obligations under the Act.
- 19.3 In particular the Supplier will:
  - 19.3.1 keep full and accurate records of its activities under this Agreement;
  - 19.3.2 supply information which it holds and which is within the scope of a request for information addressed to the Client within five (5) Business Days of notification by the Client of the request;
  - 19.3.3 supply information which the Client requires in order to comply with an Information Notice, Enforcement Notice or Decision of the Information Commissioner within five (5) Business Days of notification by the Client;
  - 19.3.4 appoint a named individual to be the person with whom the Client can correspond for the purposes of this Clause 19.3.
- 19.4 The Client agrees that it will consult the Supplier, following its receipt of a request for information under the Act, where:
  - 19.4.1 disclosure of information in response to the request might prejudice the legal rights or commercial interests of the Supplier;
  - 19.4.2 the information requested is Confidential Information of the Supplier in respect of which the Client is otherwise under a duty of confidentiality pursuant to Clause 18.1;
  - 19.4.3 the views of the Supplier may assist the Client in determining whether an exemption under the Act would apply to the information requested;
  - 19.4.4 the views of the Supplier may assist the Client to determine where the public interest lies under Section 2 of the Act.
- 19.5 The Supplier agrees to respond to any consultation from the Client pursuant to Paragraph 1.4 above within five (5) Business Days and acknowledges and agrees:

- 19.5.1 that the Client may be obliged, in pursuance of its duties under the Act, to release information in any event if the Supplier does not respond;
- 19.5.2 that the decision on disclosure of information in response to a request is that of the Client alone having regard to the provisions of the Act.

## **20 DATA PROTECTION**

- 20.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 20 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this Clause 20, "Applicable Laws" means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK law; and "Domestic UK Law" means the UK Data Protection Legislation and any other law that applies in the UK.
- 20.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Supplier is the Processor. Schedule 5 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 20.3 Without prejudice to the generality of Clause 20.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this Agreement.
- 20.4 Without prejudice to the generality of Clause 20.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
  - 20.4.1 process that Personal Data only on the documented written instructions of the Client which are set out in Schedule 5, unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Client;
  - 20.4.2 ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Client, 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 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);
  - 20.4.3 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

- (a) the Client or the Supplier has provided appropriate safeguards in relation to the transfer;
- (b) the Data Subject has enforceable rights and effective remedies;
- (c) the Supplier 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 Supplier complies with the reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

20.4.4 notify the Client immediately if it receives:

- (a) a request from a Data Subject to have access to that person's Personal Data;
- (b) a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);

20.4.5 assist the Client in responding to any request from a Data Subject and in ensuring compliance with the Client's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

20.4.6 notify the Client without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;

20.4.7 at the written direction of the Client, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by the Applicable Laws to store the Personal Data;

20.4.8 maintain complete and accurate records and information to demonstrate its compliance with this Clause 20 and allow for audits by the Client or the Client's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

20.5 The Supplier shall indemnify the Client against any losses, damages, cost or expenses incurred by the Client arising from, or in connection with, any breach of the Supplier's obligations under this Clause 20.

20.6 Where the Supplier intends to engage a sub-contractor pursuant to Clause 14 and intends for that sub-contractor to process any Personal Data relating to this agreement, it shall:

20.6.1 notify the Client in writing of the intended processing by the sub-contractor;

20.6.2 obtain prior written consent from the Client to the processing;

20.6.3 enter into a written agreement incorporating terms which are substantially similar to those set out in this Clause 20.

20.7 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this Clause 20 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

20.8 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

## **21 PUBLICATION OF SPEND**

21.1 The Supplier hereby confirms that it:

21.1.1 understands that local authorities are required by the Government to publish details of all spending over £500, including details of contracts and tenders over £500; and

21.1.2 agrees that the Client and the Dorset Local Authority Tourism Partners may therefore publish details (to the extent and in the manner required by the Government) of their contract with the Supplier; and

that it will comply with any reasonable request from the Client or Dorset Local Authority Tourism Partners in order to assist the Client or Dorset Local Authority Tourism Partners in complying with their obligations in respect of this requirement.

## **22 MONITORING THE AGREEMENT**

22.1 Representatives of the Parties shall meet at least once every Quarter during the Term to review the provision of the Services under this Agreement (provided that the Client shall within reason be entitled to require additional meetings in the initial 6-month period of the Agreement if reasonably required).

22.2 In each year during the Term the Parties shall conduct a comprehensive review and explore whether the provision of the Services and this Agreement as a whole (including the Schedules) can be improved in accordance with the principles of best value for the Client.

## **23 CHANGE CONTROL AND AMENDMENTS TO THE AGREEMENT**

23.1 If either Party identifies a potential requirement for a Change, that Party will be entitled to issue to the other Party a written statement setting out details of the proposed change (a "Change Request").

23.2 If sent by the Supplier, the Change Request shall state the effect (if any) such a Change shall have on the Services, the Service Levels and the Charges. In the case of any proposal to add any new services or facilities or otherwise materially increase the scope of the Services, the Supplier shall ensure that the Change Request shall also specify the scope and functionality of such new services, the proposed timetable for implementation of the Change and any impact on any existing Services.

23.3 If sent by the Client, the receipt of the Change Request by the Supplier will constitute a request to the Supplier to state in writing whether the Change is possible, and the effect (if any) the Change shall have on the Services, the Service Levels and the Charges. The Supplier shall use all reasonable endeavours to supply the necessary details within ten (10)

working days from receipt of the Change Request or within such other period as may be agreed.

- 23.4 Following receipt by the Client of the information to be provided by the Supplier in accordance with Clauses 23.1 to 23.3, the Parties will meet and in good faith seek to agree whether or not to implement the Change. If the Change is implemented, the amended Services, Service levels and/or Charges shall then become the Services, Service Levels and Charges (as the case may be) for the purpose of this Agreement.
- 23.5 The Supplier shall not implement any Changes unless instructed to do so in writing by the Client.
- 23.6 No amendments to this Agreement, nor any additional or substitute Clauses, Schedules or appendices thereto, shall be valid unless agreed in writing between both the Parties and in accordance with this Clause 23.
- 23.7 Both Parties shall maintain a complete and accurate master copy of this Agreement during the term thereof containing all amendments thereto.

## **24 COMMUNICATIONS AND NOTICES**

- 24.1 Except as otherwise expressly provided no formal communication from one Party to the other shall have any validity under this Agreement unless made in writing in accordance with this Clause 24.
- 24.2 Any notice or other communication whatsoever which either Party hereto is required or authorised by this Agreement to give or make to the other shall be given or made either by post in a prepaid letter or by electronic mail or by facsimile transmission confirmed by post in a prepaid letter, addressed to the other Party in the manner referred to in Clause 24.3 below and if that letter is not returned as being undelivered that notice or communication shall be deemed for the purposes of this Agreement to have been given or made after two days, for a letter, or four hours, for an electronic mail or facsimile transmission.
- 24.3 For the purposes of Clause 24.2 above the nominated representative and address of each Party shall be:

**For the Client:**

Address: Dorset Council, South Walks House, South Walks Road, Dorchester, Dorset, DT1 1UZ  
For the attention of: Rachel Symes  
Title: Senior Tourism Marketing Officer  
Telephone: 01305 252352  
Email:  
Rachel.Symes@dorsetcouncil.gov.uk

**For the Supplier:**

Address: [insert address]  
For the attention of: [insert name]  
Title: [insert title]  
Telephone: [insert telephone number]  
Email: [insert email address]

- 24.4 In the event that any of the details set out in Clause 24.3 change, then the relevant Party shall, as soon as is reasonably practical following such change, notify the other Party of the revised details (by notice as provided in this Clause).
- 24.5 Any amendments to this Agreement (as provided for under Clause 23) shall not take effect until signed by both of the representatives set out in Clause 24.3 above (or their duly appointed deputies).

## **25 SEVERABILITY**

- 25.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Client and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

## **26 WAIVER**

- 26.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.
- 26.2 A waiver of any default shall not constitute a waiver of any subsequent default.
- 26.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 24.

## **27 EQUAL OPPORTUNITIES**

- 27.1 The Supplier and any subcontractor employed by the Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race or ethnic origin, disability, gender, sexual orientation, religion or belief, age or disability:
- (a) in the supply and provision of services under this Agreement, and
  - (b) in its employment practices.
- 27.2 Without prejudice to the generality of the foregoing, the Supplier and any subcontractor employed by the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant legislation, or any statutory modification or re-enactment thereof.
- 27.3 The Supplier and any subcontractor employed by the Supplier will take all reasonable measures to observe as far as possible the Codes of Practice produced by the Equality and Human Rights Commission, which give practical guidance to employers on the elimination of discrimination.
- 27.4 In the event of any finding of unlawful discrimination being made against the Supplier or any subcontractor employed by the Supplier during the contract period by any court or employment tribunal, or any adverse finding or formal investigation by the Equality and Human Rights Commission over the same period, the Supplier shall inform the Client of this finding and shall take appropriate steps to avoid repetition of the unlawful discrimination.
- 27.5 The Supplier and any subcontractor employed by the Supplier shall provide a copy of its policies to the Client at any time upon request. In addition, the Client may reasonably request other information from time to time for the purpose of assessing the Supplier's compliance with the above conditions.

- 27.6 Where the Supplier commits a breach of Clause 27.1, the Client may forthwith determine this Agreement. Such determination shall be without prejudice to any other rights and remedies which the Client may possess.
- 27.7 The Supplier shall notify the Client forthwith in writing as soon as it becomes aware of any investigation or of proceedings brought against the Supplier under the Equality Act 2010, or any other relevant legislation.
- 27.8 The Supplier shall indemnify the Client with respect to all costs, charges and expenses (including legal and administrative expenses) and such other financial redress to cover any payments the Client may have been ordered or required to pay to a third party arising out of or in connection with any investigation or proceedings under the Equality Act 2010 (or any other equal opportunities legislation) which arise directly or indirectly out of any act or omission of the provider or its staff.
- 27.9 The Supplier and all persons employed by the Supplier to perform the Agreement shall comply with the Client's own employment policy and codes of practice relating to racial discrimination and equal opportunities, or, provided that the provider's employment policy and code of practice are provided to the Client and it agrees that the policies provide equal opportunities protection equivalent to or greater than the policies of the Client, the Supplier shall comply with its own policies and codes of practice in connection with the performance of this Agreement.

## **28 ANTI-BRIBERY AND CORRUPTION**

- 28.1 The Client may cancel the Agreement by way of a written notice with immediate effect and recover from the Supplier the amount of any loss resulting from the cancellation if at any time it becomes known to the Client that the Supplier or any person employed by the Supplier or acting on his behalf whether with or without the knowledge of the Supplier has:
- 28.1.1 offered, paid or given or agreed to give directly or indirectly any gift in money or any other form to any member, employee or agent of the Client as an inducement or reward in relation to the obtaining or execution of the Agreement or any other agreement with the Client; or
- 28.1.2 favoured or discriminated against any person in relation to this or any other agreement with the Client; or
- 28.1.3 in the reasonable opinion of the Client appears to have committed an offence in relation to any agreement with the Client under the Bribery Act 2010 or Section 117(2) Local Government Act 1972 (as amended).

## **29 DISPUTE RESOLUTION**

- 29.1 The Parties shall in the first instance endeavour to resolve any dispute that may arise between them by recourse to the following escalation procedure.
- 29.2 In the event of any dispute, difference or question of interpretation arising between the Parties, neither Party shall take recourse to any other resolution until escalation procedures between the Parties as set out in this Clause have been fully exercised.
- 29.3 The escalation procedure shall be as follows :



	<b>Level of responsibility for Supplier</b>	<b>Level of responsibility for Client</b>
<b>First level of escalation (Level 1)</b>	Service Manager	Account Manager
<b>Second level of escalation (Level 2)</b>	Chief Executive	Managing Director

29.4 In the event that resolution is not achieved within fourteen (14) days of submission to Level 1 authorities (as set out in the above table), the dispute shall be escalated to Level 2 authorities.

29.5 If resolution is not achieved within fourteen (14) days of submission to Level 2, either Party may within a further seven (7) days require (by written notice to the other Party) that structured negotiations be entered into with the assistance of a neutral adviser or mediator (“Neutral Adviser”) and in such circumstances the following provisions shall apply:

29.5.1 If the Parties are unable to agree on a Neutral Adviser or if the Neutral Adviser agreed upon is unable or unwilling to act, either Party may apply to CEDR (the Centre for Dispute Resolution) to appoint a Neutral Adviser;

29.5.2 The Parties shall, within 14 days of the appointment of a Neutral Adviser, meet with him in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiations;

29.5.3 The Neutral Adviser shall produce recommendations based upon a review of information provided by the Parties as to what he considers to be a reasonable course of action to resolve the dispute taking into account the respective rights and obligations of the Parties as set out in the Agreement;

29.5.4 If the Parties accept the Neutral Adviser’s recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be reduced to writing and, once it is signed by the duly authorised representatives, shall be binding upon the Parties. The Parties shall bear their own costs in connection with this Clause but shall equally share the costs of the Neutral Adviser;

29.5.5 Unless concluded by the written binding agreement referred to in 29.5.4 above, all negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

29.5.6 Failing agreement on the basis referred to in 29.5.4 above, either of the Parties may invite the Neutral Adviser to provide a non-binding opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings commenced pursuant to the terms of this Agreement without the prior written consent of both Parties.

29.6 In the event that any dispute remains unsettled following compliance with the escalation procedure set out above, then either Party may refer the matter to the courts.

### **30 WHISTLEBLOWING**

30.1 The Supplier shall be aware of and adhere to the principles set out in the Client’s whistleblowing policy in reporting concerns which arise during the Term and shall ensure that its agents and sub-contractors do the same. The Client’s whistleblowing policy can be accessed on the Client’s website at [www.dorsetcouncil.gov.uk](http://www.dorsetcouncil.gov.uk).

**31 ENTIRE AGREEMENT**

31.1 This Agreement, the Schedules and the documents annexed to it and referred to in it contain the whole agreement between the Parties relating to the subject matter hereof, and supersede all prior agreements, arrangements and understandings between the Parties relating to that subject matter.

**32 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

32.1 Nothing in this Agreement is intended to confer any benefit on any person who is not a Party to it.

**33 GOVERNING LAW AND JURISDICTION**

33.1 This Agreement shall be governed by and construed in accordance with the law of England and Wales and each Party hereby submits to the exclusive jurisdiction of the English courts.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

DRAFT

**EXECUTED** as a **DEED**  
by the affixing of the **COMMON SEAL**  
of **DORSET COUNCIL**  
in the presence of:

.....  
Authorised Signatory

**EXECUTED** as a **DEED**  
by **[INSERT NAME OF SUPPLIER]**  
acting by **[INSERT NAME]**,  
a director, in the presence of:

.....  
[Insert name], Director

.....  
Signature of Witness

.....  
Name of Witness (in block capitals)

.....  
.....  
.....

.....  
Address of Witness

.....  
Occupation of Witness

## SCHEDULE 1: SERVICES AND CHARGES

The breakdown of setup costs with regard to the Contract is detailed below. All prices are subject to VAT at current rates

### Costs

The following costs are associated with this contract.

No.	Requirement	Cost		Comments
		One-off	Per Annum	
1	<b>TOURISM PRODUCT DATABASE</b>			
1.1	Product Data Types			
1.2	Advertiser Package & Expiry			
1.3	Accreditation Information ( <i>Desirable</i> )			
1.4	Data Import			
1.5	Data Export			
1.6	Secure Back-up and Recovery			
2.	<b>CORE DMS FUNCTIONALITY</b>			
2.1	User Management			
2.2	Product Data Management (PDM)			
2.3	Tourist Information Centre (TIC) Access			
2.4	Advertiser Availability, Booking and Content Management Systems - Availability and Online Booking - Advertiser Content Management			
2.5	Customer Relationship Marketing (CRM): B2B & B2C			
2.6	Online Survey & Competition Management			
2.7	KPI Reporting - Website Analytics - Database - Booking Performance - Advertiser Statistics	-	Included in core costs	

3.	WEBSITE & CONTENT MANAGEMENT						
3.1	Access for all						
3.2	Design & Build						
3.3	Product Data Searches						
3.4	Results Listing Page(s)						
3.5	Detailed Product Listing Page						
3.6	Itinerary Planner						
3.7	Brochure Request						
3.8	Events Submission						
3.9	Content Management System (CMS)						
3.10	TripAdvisor Integration ( <i>Desirable</i> )						
3.11	Social Media Integration						
3.12	Banner Advertising						
3.13	Maps						
3.14	Affiliate Marketing						
3.15	Search Engine Optimisation (SEO)						
3.16	Search Widget						
4.	TRADE SITE						
	Cost to create a Trade Site						
5.	PROJECT IMPLEMENTATION & TRAINING						
5.1	Project Implementation						
5.2	Training						
6.	HOSTING & BANDWIDTH						
	Cost to host and manage data for the whole DMS & Website solution.						
7.	TECHNICAL & USER SUPPORT						
	Cost to Support the technical features of whole DMS & Website solution and Users.						
8.	DATA MIGRATION & TERMINATION SERVICES						
	Cost to migrate all data at the end of the contract or if the contract is terminated early.					-	-
Total Cost (excluding one-off costs)					Total one-off Cost	Total Cost Over 5 years (inclusive of all costs)	
Year 1	Year 2	Year 3	Year 4	Year 5			

**Invoicing Schedule:**

The Supplier will invoice for this project to the following schedule. *NB. Delays to the delivery of individual items caused by the client will not affect the invoicing dates.*

<b>Item</b>	<b>Amount</b>	<b>Date</b>
40% of the setup costs on sign of this contract		
40% of the setup costs once the website has been handed to the Client for Population		
20% of the setup costs on go-live or 1 month after the website has been handed to the Client for Population whichever is sooner.		
Year 1 Annuals the month before new contract year begins in May.		
Year 2 Annuals the month before the anniversary of the Contract date.		
Year 3 Annuals the month before the anniversary of the Contract date.		

**SCHEDULE 2: SERVICE LEVEL AGREEMENT**

[to be provided by the Supplier]

DRAFT

**SCHEDULE 3: CLIENT'S INVITATION TO TENDER**

DRAFT



**SCHEDULE 4: SUPPLIER'S TENDER SUBMISSION**

DRAFT

**SCHEDULE 5: PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

1. The Supplier shall comply with any further written instructions with respect to processing by the Client.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	Contract for the provision of a web site, destination management system and related support and hosting facilities
Duration of the processing	For the duration of the Term
Nature and purposes of the processing	The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, retrieval, use, disclosure by transmission, erasure or destruction of data (whether or not by automated means) to deliver the destination management system.
Type of Personal Data	Name, address, date of birth, telephone number, email address.
Categories of Data Subject	Staff (including volunteers, agents, and temporary workers), customers/clients, suppliers, members of the public, users of Visit Dorset.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	All personal data to be destroyed on expiration or termination of the Agreement.