

DATED

2021

WOKINGHAM TOWN COUNCIL

and

[NAME OF SUPPLIER]

EVENTS CONTRACT

THIS AGREEMENT is dated

2021

PARTIES

- (1) **WOKINGHAM TOWN COUNCIL** of Town Hall, Market Place, Wokingham Berkshire, RG40 1AS (**Council**).
- (2) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (**Supplier**).

BACKGROUND

- (A) The Council wish to organise and hold the Event (as defined below).
- (B) The Council sought proposals for the provision of certain services to be provided during the Event in accordance with all relevant Standing Orders and Financial Regulations.
- (C) The Council has, through a competitive process, selected the Supplier to provide the Services (as defined below) at the Event and the Supplier has agreed to provide the Services at the Event in accordance with the terms and conditions of this agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Associated Company: any holding company from time to time of the Supplier and any subsidiary from time to time of the Supplier, or any subsidiary of any such holding company.

Authorised Representatives: the persons respectively designated as such by the Council and the Supplier, the first such persons being set out in Schedule 4.

Change: any change to this agreement including to any of the Services.

Change Control Procedure: the procedure for changing this agreement, as set out in Schedule 5.

Charges: the charges payable by the Council to the Supplier for the Services which shall be comprised of the Deposit and the Final Payment.

Commercially Sensitive Information: the information listed in Schedule 6 comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier

has indicated to the Council that, if disclosed by the Council, would cause the Supplier significant commercial disadvantage or material financial loss.

Data Controller: shall have the same meaning as set out in the Data Protection Legislation.

Data Processor: shall have the same meaning as set out in the Data Protection Legislation.

Data Protection Legislation: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy.

Data Subject: shall have the same meaning as set out in the Data Protection Legislation.

Deposit: the payment of the amount specified in Schedule 3 to be made by the Council to the Supplier on account of the Charges.

EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Event: the event, function, activity or occasion organised by the Council at which the Supplier has agreed to provide the Services, as more particularly described in Schedule 1.

Event Date: means the date on which the Event is scheduled to occur, as set out in Schedule 1.

Final Payment: the payment of the amount specified in Schedule 3 to be made by the Council to the Supplier in final settlement of the Charges.

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

GDPR: the General Data Protection Regulation ((EU) 2016/679).

Information: has the meaning given under section 84 of FOIA.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service [including without limitation all **[[INSERT DETAILS OF SPECIFIC CONSENTS REQUIRED (IF ANY)]]**].

Personal Data: shall have the same meaning as set out in the Data Protection Legislation.

Premises: the premises at which the Event is to be held.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

Specification: the description or specification for the Services as set out in Schedule 1.

Sub-Contract: any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or suppliers that enter into a Sub-Contract with the Supplier.

Supplier's Personnel: all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Supplier's Tender: the tender submitted by the Supplier and other associated documentation set out in Schedule 2.

Services: the services to be delivered by or on behalf of the Supplier as described in the Specification.

UK Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.

- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes faxes and e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
 - (b) Schedule 1 to this agreement;
 - (c) the remaining schedules to this agreement other than Schedule 2;
 - (d) Schedule 2 to this agreement.

2. SUPPLY OF SERVICES

- 2.1 The Supplier shall provide the Services to the Council in accordance with the terms of this agreement.
- 2.2 The Supplier shall meet any performance dates and times for the Services specified in this agreement.
- 2.3 In providing the Services, the Supplier shall:
- (a) co-operate with the Council in all matters relating to the Services, and comply with all instructions of the Council;
 - (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

- (c) use personnel who are suitably skilled and experienced to perform to ensure that the Supplier's obligations are fulfilled in accordance with the Specification;
- (d) ensure that the Services and any deliverables required at or in preparation for the Event will conform with all descriptions and specifications set out in the Specification;
- (e) be liable for any damage caused by the Supplier or any of the Supplier's Personnel to the Premises or any other property of the Council including but not limited to buildings, stages, vehicles, equipment, contents or fittings used during the Event;
- (f) observe and shall procure that the Supplier's Personnel observe all health and safety rules and regulations and any other security requirements that apply at the Premises or at any other such premises or sites where the Services are to be provided;
- (g) not do or omit to do anything and procure that the Supplier's Personnel do not do or omit to do anything which may cause the Council to lose any licence, authority, consent or permission on which it relies for the purposes of carrying out its public duties, obligations and responsibilities, conducting its business, and the Supplier acknowledges that the Council may rely or act on the Services.

3. DUE DILIGENCE AND SUPPLIER'S WARRANTY

3.1 The Supplier acknowledges and confirms that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
- (b) it has received all information requested by it from the Council pursuant to clause 3.1(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
- (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to clause 3.1(b);
- (d) it has raised all relevant due diligence questions with the Council before the date of this Agreement; and
- (e) it has entered into this agreement in reliance on its own due diligence.

3.2 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Supplier by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

3.3 The Supplier:

- (a) as at the date of this agreement, warrants and represents that all information contained in the Supplier's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the agreement; and
- (b) shall promptly notify the Council in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services.

3.4 The Supplier shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Supplier in accordance with clause 3.3(b) save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Council and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

3.5 Nothing in this clause 3 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

4. COUNCIL'S OBLIGATIONS

The Council shall:

- (a) on reasonable advanced notice, provide the Supplier with access at reasonable times to the Premises or other premises or sites for the purpose of providing the Services or preparing for the Event;
- (b) provide to the Supplier such information relating to the Event as the Supplier may reasonably request and the Council considers reasonably necessary for the purpose of providing the Services; and

- (c) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Premises or other premises or sites where the Services are to be provided.

5. SUB-CONTRACTING

- 5.1 The Supplier shall not sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Council.
- 5.2 In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:
 - (a) remain responsible to the Council for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
 - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
 - (c) provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council.

6. COMPLIANCE

- 6.1 Save where the Council has expressly agreed in writing to do so, the Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 6.2 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 6.3 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Supplier shall instruct the Supplier's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

7. PAYMENT

- 7.1 In consideration of the provision of the Services by the Supplier, the Council shall pay the Charges to the Supplier in accordance with this clause 6 and Schedule 3.
- 7.2 The Charges for the Services shall be no more than as set out in the Council's acceptance of the Supplier's Tender, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Council, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 7.3 The Supplier shall be entitled to invoice the Council for the Charges in the following instalments:
- (a) the Deposit on after the date of this agreement; and
 - (b) the Final Payment on or after the Event Date.
- 7.4 The Council shall pay the Charges which have become payable within 30 days of receipt of an undisputed invoice from the Supplier.
- 7.5 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 10. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 14 days after resolution of the dispute between the parties.
- 7.6 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Supplier shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.
- 7.7 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this agreement. Such records shall be retained for inspection by the Council for two years following Event Date.
- 7.8 Where the Supplier enters into a Sub-Contract with a supplier or contractor for the purpose of performing all or part of the Services, it shall cause a term

to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Supplier to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

- 7.9 The Council may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this agreement or any other agreement pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to the Council.
- 7.10 The Supplier shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

8. CHANGE CONTROL

Any requirement for a Change shall be subject to the Change Control Procedure.

9. INDEMNITY

- 9.1 The Supplier shall keep the Council indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Council as a result of or in connection with:
- (a) any claim brought against the Council for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier or the Supplier's Personnel; and
 - (b) any claim made against the Council by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of its obligations under this agreement by the Supplier or the Supplier's Personnel.
- 9.2 This clause 9 shall survive termination or expiry of the agreement.

10. DISPUTE RESOLUTION

10.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice.

10.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 25.9 which shall apply at all times.

11. FREEDOM OF INFORMATION

11.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Council all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Council with a copy of all Information belonging to the Council requested in the Request For Information which is in its possession or control in the form that the Council requires within five Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Council.

11.2 The Supplier acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Council shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

12. DATA PROTECTION

12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 12, **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.

12.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Data Controller and the Supplier is the Data Processor. Schedule 8 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.

12.3 Without prejudice to the generality of clause 12.1, the Council 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.

12.4 Without prejudice to the generality of clause 12.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

- (a) process that Personal Data only on the written instructions of the Council, unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is so required, it shall promptly notify the Council before processing the Personal Data, unless prohibited by the Applicable Laws;
- (b) 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 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);

- (c) 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:
 - (i) the Council or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) 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
 - (iv) the Supplier complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (d) notify the Council immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) 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);
- (e) assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Council immediately and in any event within 24 hours 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;

- (g) at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination or expiry of the agreement unless required by the Applicable Laws to store the Personal Data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 12 and allow for audits by the Council or the Council's designated auditor to review the Supplier's compliance with the Data Protection Legislation.

12.5 The Supplier shall indemnify the Council against any losses, damages, cost or expenses incurred by the Council arising from, or in connection with, any breach of the Supplier's obligations under this clause 12.

12.6 Where the Supplier intends to engage a Sub-Contractor and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:

- (a) notify the Council in writing of the intended processing by the Sub-Contractor;
- (b) obtain prior written consent to the processing;
- (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 12.

12.7 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 12 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this agreement).

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

13. EVENT CANCELLATION

13.1 The Council reserves the right to cancel the Event for any reason and at any time prior to the Event Date. The Council shall notify the Supplier of the cancellation as soon as reasonably practicable following the Council's decision to cancel.

13.2 The parties agree that:

- (a) the Council shall not be in breach of this agreement by virtue of that cancellation;
- (b) on the Council notifying the Supplier of such cancellation this agreement shall, subject to clause 13.4, automatically terminate and the Supplier shall be entitled to retain a fair proportion of the Deposit taking into account:
 - (i) the proximity of such notification to the Event Date; and
 - (ii) the Supplier's own irrecoverable expenditure in complying with its obligations under the terms of this agreement;
- (c) the Council shall have no liability to the Supplier as a result of its decision to cancel the Event and the Supplier shall not be entitled to the Final Payment or any additional costs or charges.

13.3 The Council shall have the ultimate decision (at all times acting reasonably) as to the proportion of the Deposit which the Supplier is entitled to retain under clause 13.2(b) and shall notify the Supplier of the proportion of the Deposit which the Supplier is entitled to retain and the proportion which the Supplier must return to the Council within 30 days of notice of cancellation.

13.4 The Supplier shall pay to the Council such part of the Deposit which the Council has determined must be returned within five Working Days of receipt the notice given pursuant to clause 13.4.

13.5 At any time after giving notice pursuant to clause 13.1, the Council may notify the Supplier that the Event will be held on a date later than the Event Date (such later event being the **Postponed Event** and the date of the Postponed Event being the **Postponed Event Date**) and may give the Supplier the opportunity to provide the Services at the Postponed Event. If the Supplier agrees to provide the Services at the Postponed Event, then:

- (a) this agreement shall be deemed to have continued (and shall continue) in full force and effect notwithstanding clause 13.2(b) save that any reference in this agreement to the "Event" shall be construed as a reference to the Postponed Event and any reference in this agreement to the "Event Date" shall be a reference to the Postponed Event Date;
- (b) any Deposit paid to and retained by the Supplier shall be applied towards the Charges for the Postponed Event and no further fees, costs or charges shall be payable to the Supplier by the Council other than:
 - (i) any part of the Deposit which was returned to the Council pursuant to clause 13.4, which shall be invoiced by the Supplier following its agreement to provide the Services at the

Postponed Event and payable within 30 days of receipt by the Council of such invoice; and

- (ii) the Final Payment, which shall be invoiced by the Supplier at any time following the Postponed Event Date and payable within 30 days of receipt by the Council of such invoice;
- (c) any Change required as a result of the Event being postponed shall be dealt with in accordance with the Change Control Procedure.

14. TERMINATION

14.1 Without affecting any other right or remedy available to it, the Council may terminate this agreement at any time at least three months prior to the Event Date.

14.2 Without limiting its other rights or remedies, the Council may terminate this agreement with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material breach of any term of this agreement;
- (b) the Supplier repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (c) the Council are of the reasonably justified opinion that the Supplier will not, cannot or may not provide the Services to a reasonable standard on the Event Date; or
- (d) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (e) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a

solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

- (g) the Supplier (being an individual) is the subject of a bankruptcy petition order;
- (h) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (i) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- (j) a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (k) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (l) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(d) to clause 13.2(k) (inclusive);
- (m) the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
- (n) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

14.3 Termination of this agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

14.4 If this agreement is terminated pursuant to clause 14.1, the Supplier shall be entitled to retain a fair proportion of the Deposit taking into account:

- (a) the proximity of such notification to the Event Date; and
- (b) the Supplier's own irrecoverable expenditure in complying with his obligations under the terms of this agreement.

14.5 The Council shall have the ultimate decision (at all times acting reasonably) as to the proportion of the Deposit paid under clause 14.4 and shall notify the

Supplier of the proportion of the Deposit which the Supplier is entitled to retain and the proportion which the Supplier must return to the Council within 30 days of notice of termination.

- 14.6 The Supplier shall pay to the Council such part of the Deposit which the Council has determined must be returned within five Working Days of receipt the notice given pursuant to clause 14.5.
- 14.7 If this agreement is terminated pursuant to clause 14.2, the Supplier shall immediately return the Deposit to the Council.
- 14.8 Clauses which expressly or by implication survive termination of this agreement shall continue in full force and effect.

15. COUNCIL REMEDIES

- 15.1 If this agreement is terminated pursuant to clause 14.2(a), clause 14.2(b) or clause 14.2(c), the Council shall, without limiting its other rights or remedies, have one or more of the following rights:
- (a) refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - (b) recover from the Supplier any costs incurred by the Council in obtaining substitute services from a third party;
 - (c) have the Deposit refunded in full by the Supplier;
 - (d) where the Council has paid any other sums in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; and
 - (e) to claim damages for any additional costs, loss or expenses incurred by the Council which are in any way attributable to the matters giving rise to the termination of this agreement,

and the Supplier shall use its best endeavours to procure that a substitute supplier will perform the Services to a reasonable standard on the Event Date.

- 15.2 The Council's rights under this agreement are in addition to its rights and remedies implied by statute and common law.

16. INSURANCE

For the duration of the agreement and for a period of seven years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the

liabilities that may arise under or in connection with this agreement and shall, on the Council's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

17. CONFIDENTIALITY

17.1 A party (**receiving party**) shall keep in strict confidence all Personal Data, technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party and its business, its operations, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under this agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to this agreement. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

17.2 This clause 17 shall survive termination or expiry of this agreement.

18. FORCE MAJEURE

18.1 Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure result from events, circumstances or causes beyond its reasonable control.

18.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

18.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 20 Working Days, the Council may terminate this agreement immediately by giving written notice to the Supplier.

18.4 For the avoidance of doubt, the Council shall be entitled to exercise its right to cancel or postpone the Event pursuant to clause 13 as a result of a Force Majeure Event without liability.

19. SUCCEEDING EVENT

Subject at all times to the relevant Standing Orders and Financial Regulations applicable to the Council, if the Council wishes to appoint the Supplier to provide any services for a succeeding Event, it shall give the Supplier notice of its desire to do so within six months from the Event Date.

20. ANTI-BRIBERY

20.1 The Supplier shall:

- (a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and will enforce them where appropriate;
- (c) promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement.

20.2 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with this agreement (including but not limited to a Sub-Contractor) does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 20 (**Relevant Terms**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant terms, and shall be directly liable to the Council for any breach by such persons of any of the Relevant Terms.

21. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

22. PUBLICITY

Subject to obtaining the Council's prior written consent, the Supplier may:

- (a) make any press announcements or publicise this agreement or its contents; and

- (b) use the Council's name or logo in any promotion or marketing or announcement of orders.

23. ENTIRE AGREEMENT

23.1 This agreement, the schedules and the documents annexed to it or otherwise referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

23.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

24. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

25. GENERAL

25.1 Assignment and other dealings.

- (a) The Council may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement.
- (b) The Supplier may not assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights or obligations under this agreement without the prior written consent of the Council.

25.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with this agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first

class post or other next Working Day delivery service, commercial courier, fax or e-mail.

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 25.2(a) if sent by pre-paid first class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Working Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

25.3 **Severance.** If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

25.4 **Waiver.** A waiver of any right or remedy under this agreement or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

25.5 **No partnership or agency.** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

25.6 **Third parties.** A person who is not a party to this agreement shall not have any rights to enforce its terms.

25.7 **Variation.** Except as set out in this agreement, no variation of this agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Council.

25.8 **Governing law.** This agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual

disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

25.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1 Event and Specification

The Event

[PROVIDE FULL DETAILS OF THE EVENT INCLUDING THE EVENT DATE]

The Specification

[PROVIDE FULL DETAILS OF THE SPECIFICATION OR DESCRIPTION OF THE SERVICES TO BE PROVIDED BY THE SUPPLIER]

Schedule 2 Supplier's Tender

Schedule 3 Charges and payment

The Charges payable by the Council to the Supplier for the Services shall be limited to the sum of [£XXXXXX] which shall be made up of the following:

- Deposit - [£XXXXXX]
- Final Payment - [£XXXXXX]

Schedule 4 Authorised Representatives and Key Personnel

1. AUTHORISED REPRESENTATIVES

1.1 The Council's initial Authorised Representative: Jan Nowecki being the Town Clerk for the time being of the Town of Wokingham.

1.2 The Supplier's initial Authorised Representative: [INSERT DETAILS]

Schedule 5 Change control

1. GENERAL PRINCIPLES

- 1.1 Where the Council or the Supplier sees a need to change this agreement, the Council may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 5.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 5, shall be undertaken entirely at the expense and liability of the Supplier.

2. PROCEDURE

- 2.1 Discussion between the Council and the Supplier concerning a Change shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to change this agreement by the Council; or
 - (c) a recommendation to change this agreement by the Supplier.
- 2.2 Where the Council and the Supplier agree upon a change to this agreement a written record of the Change shall be drawn up and signed and dated by the Council and the Supplier and this written record shall constitute an amendment to this agreement.

Schedule 6 Commercially sensitive information

[DETAILS OF ANY SUPPLIER INFORMATION TO BE CLASSIFIED AS
COMMERCIALY SENSITIVE]

Schedule 7 Data Processing

1. The Supplier shall comply with any further written instructions with respect of processing by the Council.
2. Any such further instructions shall be incorporated into this Schedule.
3. Processing by the Supplier:

Scope, nature and purpose of the processing of Personal Data	To carry out services at an event organised by the Council
Duration of processing of Personal Data	The Personal Data will be processed for the period required to carry out the Supplier's obligations under this agreement
Type of Personal Data processed	So far as is known at the date of this agreement the following categories of Personal Data shall be processed under this agreement: <ul style="list-style-type: none"> • [Contact Information such as names, telephone numbers and addresses] • [Financial Information] • [Employment Information]
Categories of Data Subject	[DESCRIBE THE TYPE OF PERSON WHOSE PERSONAL DATA MAY BE PROCESSED BY THE SUPPLIER E.G. <ul style="list-style-type: none"> • Employees of the Council • Supplier's personnel]

Signed by [NAME OF
SIGNATORY]
for and on behalf of WOKINGHAM
TOWN COUNCIL

.....

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF
SUPPLIER]

.....
Director