

THIS Contract is made this \_\_\_\_\_ day of \_\_\_\_\_, 20

**BETWEEN**

The Mayor and Burgesses of the London Borough of Waltham Forest Town Hall, Forest Road, Walthamstow, E17 4JF ("**the Client or the Council**") of **the one part**

**and**

**[INSERT SUPPLIERS NAME]** ("**the Consultant or the Supplier**") of **[INSERT COMPANY ADDRESS]** registered Number: **[INSERT REGISTERED NUMBER]** of the other part

**WHEREAS:**

- (A) The Council placed a Contract Notice in the Official Journal of the European Union on [*insert date*] to establish a Dynamic Purchasing System ("DPS") for the procurement of Consultancy services.
- (B) In accordance with Regulation 34 of the Public Contracts Regulations 2015 ("Regulations"), the Council has used the restricted procedure to establish a DPS.
- (C) The Council has contracted with ADAM HTT Limited trading as *adam* (registered company 07718565 – the "Technology Provider") to provide a web-based software system namely AdamProcure.co.uk, or such other technology as agreed between the Parties from time to time (the "Technology"), to procure Services via the DPS as set out in the Regulations, as amended from time to time, and for such Services to be transacted as further set out in this Supplier Agreement.
- (D) The Council shall admit to the DPS each Supplier that satisfies the Selection Criteria and has submitted a request to participate in the DPS which complies with the Specification and any additional documents produced by the Council.
- (E) For the avoidance of doubt, there will be no obligation for the Council to

award any contracts under the DPS during its Term.

- (F) The Client wishes to appoint a consultant to deliver the service identified in the Specification attached hereto (“the Service”) for the Consultancy Fee previously agreed with the Client
- (G) The Consultant has agreed to provide the Service in accordance with the terms and conditions of this Contract

**IT IS HEREBY AGREED** as follows:

**1. Definitions and Interpretation**

1.1 The following words and phrases shall have the following meanings except where the context requires otherwise:-

Bribery Act Means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation

“Contract” Means the agreement between the Client and the Consultant consisting of this contract and the schedules hereto, the Consultant’s Tender (if any) and any other documents (or parts thereof) specified by the Client, and will be made up of the following listed documents which shall be interpreted as a single contractual arrangement:-

- 1 The Supplier Agreement;
- 2 The Self-Billing Agreement;
- 3 The Supplier Entry Guide;
- 4 The Agreement(s).

Collectively called the “Contract Documents”.

For the avoidance of doubt the Special DPS Terms annexed hereto at Schedule 3 shall

be incorporated into this Contract and be binding on the Parties.

“Term”	Means the period from [INSERT DATE] for a period of [INSERT DATE] terminating on [INSERT DATE] subject to earlier termination in accordance with the terms of this Contract or other lawful means or extension in accordance with the terms of this Contract.
Consultancy Fee or Charges	Means the sum to be paid to the Consultant by the Client for the provision of the Service as set out in Schedule 2 hereto
Client’s Data	Means the Client’s data, databases, written reports and any other information provided by the Client,
“Data and Reports”	Means all documents drawings data and databases written reports and any other information produced by the Consultant in connection with the Service.
“Fraud”	Means any offence under laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Client
“Losses	Means any loss, damages, costs, expenses or any other payment of whatever kind and however incurred, for which either party may come to be liable.
“Parties”/“Party”	Means the Consultant / the Supplier and the Client or either one of them.

“Prohibited Act

Means any of the following:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Client a financial or other advantage to-

(i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;

(c) committing any offence-

(i) under the Bribery Act;

(ii) under legislation creating offences concerning fraudulent Acts;

(iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Client; or

(iv) defrauding, attempting to defraud or conspiring to defraud the Client.

“Specification Requirement”

or Means the description of the Services to be provided under the Contract and attached as Schedule 1 hereto.

“working day”

Means Monday to Friday inclusive save where any of these days is a bank holiday in the United Kingdom

1.2 The interpretation and construction of the Contract shall be subject to the following provisions:

The terms and expressions set out in clause 1.1 shall have the meanings ascribed therein;

1.2.2 Words importing the singular meaning include where the context so admits the plural meaning and vice versa;

1.2.3 Words importing the masculine gender include the feminine and the neuter genders;

1.2.4 References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

1.2.5 Reference to a schedule or schedules shall refer to a schedule to or the schedules to this Contract

1.2.6 References to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted;

1.2.7 Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

1.2.8 In the event and only to the extent of any conflict between the documents constituting the Contract, each of these shall prevail in the following descending order of priority:

- i. The Contract being this document.
- ii. Schedule 1 - The Specification.
- iii. Schedule 2 - The Consultancy Fee
- iv. The Consultant's Tender including agreed Contractor's Proposal and form of tender.

1.2.9 As far as the context shall permit and unless expressly stated otherwise the defined terms in the documents which constitute the Contract shall be applicable one to another.

1.2.10 In the event of a conflict between the terms and conditions contained herein and the Special DPS Terms annexed hereto at Schedule 3, the Special DPS Terms shall take precedence.

## **2. Consultant's Obligations**

2.1 The Consultant shall:

- (a). complete the provision of the Service as identified in the Specification;
- (b). provide the Service in a timely and efficient manner and to a professional standard in exercising all reasonable skill care and diligence in the provision of the Service, as specified in the Specification;
- (c). ensure that whilst the Consultant or any of its employees servants or agents are on the Client's premises they will conform to the Client's normal codes of employee conduct safety and security practice and ensure that all employees or sub-contractors have had appropriate Disclosure and Barring Services (DBS) checks and are deemed to be allowed to work with children and vulnerable adults where the Services involve unsupervised contact with children and / or adults at risk;
- (d). comply with all relevant legislation, regulations and best practice;
- (e). attend such meetings at the Clients premises in connection with the provision of the Service as may be reasonably required;
- (f). submit to the Client forthwith such information receipts or other documentation as may be reasonably required by the Client in support of any invoice or request for payment submitted by the Consultant;
- (g). submit to the Client such reports and information as may reasonably be requested within any time limits specified.
- (h). The Consultant will provide the named individual(s) or a mutually agreed substitute to perform the Services.
- (i). The Consultant will at all times represent itself as an independent business and will in no circumstances represent itself or hold itself out as a representative, servant or employee of the Client.

## **3. Client's Obligations and Payment Requirements**

3.1 The Client will perform its obligations as set out in this Contract;

3.2 Provided that the Client is satisfied that the Service has been carried out in a satisfactory manner and

in accordance with the terms and conditions of the Contract, the Council shall pay the Charges to the Supplier in accordance with the Self-Billing Agreement.

3.3 The Council shall only raise a Self-Bill Invoice on behalf of the Supplier once the appropriate Receipt has been created and agreed between the Parties within the Technology and becomes payable in accordance with the Self Billing Agreement.

3.4 The Council shall pay the Charges which have become payable in accordance with the Self-Billing Agreement within thirty (30) days of the appropriate undisputed Self-Bill Invoice having been raised.

3.5 For the avoidance of doubt, the Supplier acknowledges and accepts that the Charges due for the Services provided under the Contract shall be paid by the Council via the Technology Provider, acting as the Council's payment service provider. To this extent, the Supplier acknowledges and accepts the Technology Provider can only pay the Supplier once it has received cleared funds from the Council. Any disputes regarding payment or the amount payable must first be directed to the Council.

3.6 The Parties accept that a cooperative relationship between them is needed for the successful performance of the Contract. The Parties will act fairly towards each other in a spirit of mutual cooperation for the achievement of this objective.

#### **4. Expenses**

4.1 For the avoidance of doubt the Client shall not pay for any of the Consultants expenses and the Consultancy Fee or Charges shall be the entire remuneration that the Consultant shall be entitled to for the Services that the Consultant provides under this Contract.

#### **5. Discrimination**

5.1 The Consultant (including its agent's servants and employees) shall not:

5.1.1 discriminate directly or indirectly, or by way of victimisation or harassment, against any person on and/or

5.1.2 contravene the provisions of the Equality Act 2010.

5.2 The Consultant (including its agent's servants and employees) shall observe as far as possible the provisions of:

- 5.2.1 the Equality and Human Rights Commission's Employment Statutory Code of Practice and the Equality and Human Rights Commission's Code of Practice on the Public Sector Equality Duty; and
  - 5.2.2 any other relevant guidance or code of practice introduced the Equality and Human Rights Commission or other a commission or other body set up by Parliament to promote, monitor and enforce the Equality Act 2010, including but not limited to those provisions commending the adoption, implementation and monitoring of an equal opportunity policy.
- 5.3 Where in connection with this Contract the Consultant (including its agents servants and employees) are required to carry out work on the Client's premises or alongside the Client's employees on any other premises, they shall comply with the Client's own employment policy and codes of practice relating to discrimination and equal opportunities.
- 5.4. The Consultant shall, notify the Client forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against The Consultant under the Equality Act 2010.
- 5.6 The Consultant shall provide within such reasonable time period specified all such information as may be reasonably requested by the Client relating to the Consultant's compliance with this clause 5.
- 5.7 The Consultant shall notify the Client immediately of any investigation of or proceedings against the Consultant in relation to the Equality Act 2010 and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.
- 5.8 The Consultant shall indemnify the Client against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Client arising out of or in connection with any investigation conducted or any proceedings brought in relation to the Equality Act 2010 due directly or indirectly to any act or omission by the Consultant its agents, servants or employees.

## **6. Health and Safety**

- 6.1. The Consultant shall promptly notify the Client of any health and safety hazards which may arise in connection with the performance of the Contract.
- 6.2. While on the Client's premises the Consultant shall comply with any health and



safety measures implemented by the Client.

- 6.3. The Consultant shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, in the performance of the Contract.

## **7. Documents and Data and Confidentiality**

- 7.1 The Data and Reports and the copyright and other rights contained therein shall be and shall remain the exclusive property of the Client and shall vest in the Client at the time they are created.

- 7.2 The Consultant shall not use the Client's Data or the Data and Reports for any purpose other than the provision of the Service without the prior written consent of the Client, the decision of whether or not to grant such consent being at the sole discretion of the Client.

- 7.3 The Consultant shall not use or divulge or communicate to any person, without the Client's written consent (save where required by law);

- a) any information it has obtained from the Client or any other source in relation to the Service regardless of whether this information was obtained before the commencement of this Contract; or
- b) the Client's Data and the Data and Reports or the substance thereof;

AND it is agreed that this sub-Clause shall survive the termination or expiration of the Contract indefinitely.

- 7.4 The Consultant shall impose a similar requirement as that contained in Sub-Clause 7.3 above on its employees, servants and agents.

- 7.5 Upon request by the Client and in any event upon expiration or termination of this Contract the Consultant shall forthwith deliver to the Client all copies of the Client's Data and the Data and Reports which are at the time in its custody or control.

- 7.6 All information set out or referred to in this Contract and all further information and documents provided to the Consultant at any time in connection with the Service and all documents prepared by the Consultant in connection with the Service are and shall be strictly private and confidential and the Consultant

shall not and shall ensure that its employees, servants or agents do not save where required by law disclose or hand over any such information or documents to any third party without the Client's written consent. All such information and documents shall be kept secret by the Consultant and shall be used only for the performance of the Service.

This Section, 7.6, will not apply to any information or documents:

- 7.6.1 which enter the public domain other than through a breach of this Contract;
- 7.6.2 which are lawfully in the possession of the recipient before disclosure under this Contract took place;
- 7.6.3 which are obtained from a third party who is free to disclose it and did not obtain the documents or information in breach of confidence; and
- 7.6.4 which the Consultant is required by rule of any relevant stock exchange to disclose.'

## **8. DATA PROTECTION**

- 8.1 Each party shall ensure that any information supplied to the other party shall comply with the requirements of all legislation in force from time to time including, without limitation, the Data Protection Act 1998, (as replaced, modified or re-enacted from time to time) ("DPA") and, when applicable, the General Data Protection Regulation (Regulation (EU) 2016/679) ("GDPR"), and any future such legislation.
- 8.2 Any person who becomes a data processor (the "Data Processor") on behalf of the Client shall agree to comply with all relevant legislation in force at the appropriate time, including but not limited to the DPA, GDPR and the Computer Misuse Act 1990, and shall indemnify the Client for any actions arising from breach of such legislation.
- 8.3 The Data Processor shall ensure that all information held by the Data Processor in connection with the provision of the Service and relating to any individual are stored and handled in a secure and confidential manner and entirely in accordance with the Data Processor's duties under the DPA and/or the GDPR.
- 8.4 The Data Processor shall ensure the reliability and training of all its relevant

employees to ensure awareness and compliance with applicable obligations under the DPA and/or GDPR. The Data Processor shall further ensure refresher training is provided to the relevant employees as necessary and, in any event, no less than once per year.

- 8.5 The Data Processor shall have in place throughout the Term an Information Security Management Procedure ('the Procedure') and shall ensure that all relevant employees are made aware of and trained in regards to the Procedure.
- 8.6 The Data Processor shall within twenty-four (24) hours, notify the Client of any information security breach and/or any breach of the Data Processor's obligations pursuant to the DPA and/or the GDPR, together with the steps the Data Processor shall take to rectify the breach and to avoid any future such breaches occurring.
- 8.7 To the extent that the Data Processor is required to process (as defined in the DPA and in Articles 28, 29 and 32 of the GDPR) Personal Data (as defined in the DPA and/or the GDPR as applicable) on behalf of the Client for the purposes of performing its obligations under this Contract the Data Processor shall:
- 8.7.1 process such Personal Data only in accordance with instructions from the Client;
  - 8.7.2 process such Personal Data only to the extent, and in such manner, as is necessary for the performance of its obligations under this Contract;
  - 8.7.3 in accordance with Principle 7 of the DPA and Article 32 of the GDPR, implement appropriate technical and organisational security measures to protect the Personal Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed;
  - 8.7.4 ensure a level of security appropriate to the risk is applied taking into account the harm which might result from accidental or unlawful

destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed. The security measures shall include, but not be limited to;

8.7.4.1 the pseudonymisation and encryption of the Personal Data;

8.7.4.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

8.7.4.3 the ability to restore the availability and access to the Personal Data in a timely manner in the event of a physical or technical incident;

8.7.4.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;

8.7.5 not transfer any Personal Data outside of the European Economic Area without the prior written approval of the Client;

8.7.6 return the Personal Data to the Client on the expiry or earlier termination of this Contract;

8.7.7 obtain prior written consent from the Client in order to transfer, copy, share or otherwise disclose in any manner Personal Data, Sensitive Personal Data (as defined in the DPA and/or GDPR as applicable) or information of the Client arising in respect of this Contract to any other person, including but not limited to any Sub-Contractor or agent of the Data Processor;

8.7.8 make available to the Client information processed under this Contract regarding a Data Subject (as defined in the DPA and/or GDPR as applicable) upon request by that Data Subject for a copy of their personal information ("Subject Access Request"). The Data Processor shall comply with the Subject Access Request within the statutory timeframe as identified in the DPA and/or GDPR (as applicable).

- 8.8 The Data Processor shall immediately notify the Client if the Data Processor receives:
- 8.8.1 a request from any person whose Personal Data it holds to access his Personal Data; or
  - 8.8.2 a complaint or request relating to the Client's obligations under the DPA and/or the GDPR.
- 8.9 The Data Processor shall assist and co-operate with the Client in relation to any complaint or request received, including, but not limited to:
- 8.9.1 providing full details of the complaint or request;
  - 8.9.2 complying with the request within the time limits set out in the DPA and/or GDPR (as applicable) and in accordance with the instructions of the Client; and
  - 8.9.3 promptly providing the Client with any Personal Data and other information requested by him.
- 8.10 The Data Processor shall have in place systems that comply with the DPA and/or GDPR (as applicable), specifically in terms of data storage, use, handling, disclosure, retention and destruction of the Client's data. Further the Data Processor shall carry out the processing of the Client's data strictly in accordance with this Contract and only under the express instructions of the Client.
- 8.11 The Data Processor shall allow the Client to conduct audits of the Data Processor's information or processes relating to the Data Processor's compliance with its obligations under the DPA and/or GDPR (as applicable).
- 8.12 The Data Processor shall ensure and warrants to the Client that the terms of any sub-contract made in relation to this Contract shall ensure that the Sub-Contractor shall comply with the same obligations as imposed on the Data Processor pursuant to this Clause 8 (Data Protection).

8.13 The Data Processor shall ensure that it does not knowingly or negligently fail to do something that places the Client in breach of its obligations under the DPA and/or the GDPR (as applicable). The Data Processor shall indemnify and keep indemnified the Client against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Data Processor of this Clause 8 (Data Protection) or any more general breach by the Data Processor of its obligations under the DPA and/or the GDPR (as applicable).

**9. Freedom of Information**

9.1 The Consultant acknowledges that the Client may be subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 and shall assist and cooperate with the Client (at no additional cost to the Consultancy Fee) to enable the Client to comply with these Information disclosure requirements.

9.2 The Consultant shall:

- (a) transfer a request for information (as defined by Section 8 of the FOIA) to the Client as soon as practicable after receipt and in any event within 2 [two] working days of receiving a request for information;
- (b) provide the Client with a copy of all information in its possession or power in the form that the Client requires within 5 [five] working days (or such other period as the Client may specify) of the Client requesting that information; and
- (c) provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to a request for information within the time for compliance set out in section 10 of the FOIA [or regulation 5 of the Environmental Information Regulations 2004].

9.3 The Client shall be responsible for determining at its absolute discretion whether any information designated by the Consultant to be commercially sensitive information and/or any other Information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations 2004;
- (b) is to be disclosed in response to a request for Information, and in no event shall the Consultant respond directly to a request for information unless

expressly authorised to do so by the Client.

9.4 The Consultant acknowledges that the Client may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA), be obliged under the FOIA or the Environmental Information Regulations 2004 to disclose Information:

- (a) without consulting with the Consultant, or
- (b) following consultation with the Consultant and having taken its views into account.

9.5 The Consultant shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Client to inspect such records as requested from time to time.

## **10. Civil Contingencies**

10.1 The Consultant acknowledges and accepts that the Client may have obligations under the Civil Contingencies Act 2004 ("CCA") and where this is the case the Consultant hereby agrees to:

- (a) Put in place such reasonable measures as may be necessary to ensure it is able to continue to undertake its obligations hereunder in the event of an Emergency (as defined in the CCA), and notify the Client of such measures;
- (b) Obey any instruction of the Client during and in respect of an Emergency, the Client undertaking to remunerate and indemnify the Consultant against any direct claims, costs or Losses directly arising from the Consultant's compliance with such instructions.

## **11. Insurance**

11.1 The Consultant shall (so long as this is commercially available) undertake to effect and maintain in full force and effect professional indemnity insurance (with a well established insurance office or underwriter of repute carrying on business in the United Kingdom) covering the performance of the Consultant's duties under this Contract for an indemnity limit of not less than two million pounds (£2,000,000) for each and every claim throughout the Term when the Service is provided and for a reasonable period from the date of the expiry or earlier termination of the Contract.

- 11.2 The Consultant shall effect and maintain in full force and effect (with a well established insurance office or underwriter of repute carrying on business in the United Kingdom) Public Liability insurance for an indemnity limit of not less than five million Pounds (£5,000,000) for any one occurrence or series of occurrences arising out of any one event throughout the Term.
- 11.3 The Consultant shall if the Client so requires effect and maintain in full force and effect (with a well established insurance office or underwriter of repute carrying on business in the United Kingdom) Employer's Liability insurance for an indemnity limit of not less than five million Pounds (£5,000,000) for any one occurrence or series of occurrences arising out of any one event throughout the Term.
- 11.4 The Consultant shall comply with all conditions and obligations of the insurance policies referred to above and shall immediately inform the Client if any of the insurance policies ceases to be maintained. The Consultant shall when reasonably requested to do so, from time to time produce to the Client for inspection documentary evidence that the said insurance policies are being properly maintained. The policies shall have endorsed upon them the Clients interest or shall otherwise expressly by their terms and conditions confer their benefits upon the Client.
- 11.5 The Consultant shall have in place, the insurance policies mentioned in this clause 11, by or before the commencement of the Contract.
- 11.6 Subject to Condition 15 (Sub-Contracting and Assignment) the Consultant agrees to require all their professional sub-consultants to maintain the same levels of insurance as set out above in respect of the professional sub-consultants particular areas of discipline as relating to this Contract.

## **12. Bribery and Fraud**

- 12.1 The Consultant:
- (a) shall not, and shall procure that any employee servant or agent shall not in connection with this contract commit a Prohibited Act;
  - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Client, or that an agreement has been reached to that effect, in connection with the completion of this Contract, excluding any



arrangement of which full details have been disclosed in writing to the Client before completion of this Contract.

- 12.2 The Consultant shall if requested, provide the Client with any reasonable assistance, at the Client's reasonable cost, to enable the Client to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- 12.3 The Consultant shall have an anti-bribery policy (which shall be disclosed to the Client) to prevent any employees servants or agents from committing a Prohibited Act and shall enforce it where appropriate.
- 12.4 The Consultant shall take all reasonable steps, in accordance with good industry practice, to prevent Fraud by any employee servant or agent in connection with the receipt of monies from the Client
- 12.5 If any breach of clause 12 is suspected or known, the Consultant must notify the Client immediately.
- 12.6 The Consultant shall notify the Client immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 12.7 If the Consultant notifies the Client that it suspects or knows that there may be a breach of clause 12, the Consultant must respond promptly to the Client's enquiries, co-operate with any investigation, and allow the Client to audit books, records and any other relevant documentation. This obligation shall continue for 7 years following the expiry or termination of this Contract howsoever determined
- 12.8 The Client may terminate this Contract by written notice with immediate effect if the, Consultant any employee servant or agent (in all cases whether or not acting with the Consultant's knowledge) breaches clause 12.
- 12.9 Any termination under clause 12 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Client.

### **13. Conflict of Interest**

- 13.1 The Consultant is free to perform services for any other party but must take all steps to avoid a conflict of interest and upon becoming aware of such conflict must immediately meet the Client to discuss the best way of dealing with such conflict including terminating this Contract.

13.2 The Consultant shall not employ within six months of the expiry or termination of this Contract any employee of the Client without the prior written consent of the Client, which the Client may withhold in its absolute discretion.

**14. Warranty and Indemnity**

14.1 Nothing in this Contract shall render the Client liable to indemnify the Consultant in respect of any loss liability or damage of any kind incurred by the Consultant save where such loss liability or damage is due to the negligent act or omission of the Client.

14.2 The Consultant hereby indemnifies and will keep indemnified the Client against all claims, actions and demands whatsoever and howsoever arising which may at any time be made in respect of the injury to or death of any persons or loss or destruction of or damage to any property and any other claims or liabilities arising from or in connection with the performance of the Service or any defect in the Service or any breach by the Consultant of any of the terms of this Contract which arises out of the acts defaults or omissions of the Consultant, their sub-contractors, staff, agents or employees be these wilful, negligent or otherwise and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever suffered or incurred in respect thereof or in relation thereto

14.3 The Consultant warrants that:

- a) all information representations and other matters of fact communicated to the Client by the Consultant are true to the best of its knowledge and complete and accurate in all respects;
- b) it is entitled to use and disseminate all or any of the information used by the Consultant in carrying out the Service and agrees to indemnify the Client in respect of all costs claims actions demands and proceedings made against it by third parties as a result of a breach by the Consultant of this warranty or any copyright or on account of infringement of any other protected right contained therein;
- c) it has the full capacity and authority and all necessary registrations, approvals and consents to enter into and perform this Contract and that this Contract is executed by a duly appointed and authorised representative of the Consultant;

- d) all obligations of the Consultant pursuant to this Contract shall be performed and rendered by appropriately experienced, qualified and trained staff with all due skill, care and diligence; and
- e) the Consultant is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract.

## **15. Sub-Contracting and Assignment**

- 15.1 Neither Party shall assign or otherwise transfer this Contract or any of the rights benefits or liabilities arising under it without the prior written consent of the other Party.
- 15.2 The Consultant will not sub-contract any part of the Service without the prior written consent of the Client.
- 15.3 Where the Client has given its consent to the sub-contracting of this Contract pursuant to clause 15.2, the Client may subsequently withdraw such consent provided that it acts reasonably in doing so and gives reasonable notice to the Consultant of its withdrawal of consent. Following the giving of such notice by the Client, the Consultant shall terminate the sub-contract with effect from the end of the notice period.

## **16. Breach of Contract and Termination**

- 16.1 If the Consultant commits any breach of this Contract then:
  - a) in the case of a breach which is capable of being remedied the Consultant shall at its own expense within 7 (seven) days of receiving notice from the Client to remedy such breach and shall compensate the Client in respect of any loss which may have arisen as a result of the breach; and
  - b) in the case of a breach which is not capable of being remedied or in the case where the Consultant has failed to remedy a breach in accordance with clause 16.1 a) above or where the Client decides that such a breach renders the arrangement for the performance of the Service by the Consultant unsuitable, the Client may without prejudice to any other rights it may have terminate this Contract with notice in

writing which notice shall take immediate effect.

- 16.2 The Client may terminate this Contract at any time if the Consultant undergoes a change of control, within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 which impacts adversely and materially on the performance of the Contract or becomes insolvent or where it is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or is wound up or is otherwise dissolved or if a resolution is passed for the winding up or dissolution of the Consultant (other than for the purposes of and followed by an amalgamation and reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or if an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court or being an individual has an interim order or bankruptcy order or criminal bankruptcy order made against him or if the Consultant makes a composition or arrangement with its creditors or a liquidator is appointed or being an individual shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 OR if any other events or circumstances arise which affect or are likely to affect the ability of the Consultant to carry out the Service or where any similar event to those outlined in this clause 16.2 occurs under the law of any other jurisdiction which the Consultant may be subject to.
- 16.3 The Client shall have the right to terminate the Contract, or to terminate the provision of any part of the Contract at any time by giving three Months' prior written notice to the Consultant. The Client may extend the period of notice at any time before it expires.
- 16.4 The Consultant shall be entitled to terminate the Contract at any time by giving the Client six months prior written notice.
- 16.5 Where the Contract is terminated under clauses 16.1, 16.2 or 16.4 and the Client makes other arrangements for the provision of the Service, the Client shall be entitled to recover from the Consultant the reasonable cost of making those other arrangements and any additional expenditure incurred by the Client throughout the remainder of the Term or any extension thereto where the period of such an extension had been agreed between the Parties.

- 16.6 Where the Contract is terminated pursuant to clause 16.5 above no further payments shall be payable by the Client to the Consultant until the Client has established the final cost of making those other arrangements referred to in clause 16.5.
- 16.7 Where the Client terminates the Contract under clause 16.3, the Client shall indemnify the Consultant against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Consultant by reason of the termination of the Contract, provided that the Consultant takes all reasonable steps to mitigate such loss. The Consultant shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Consultant as a result of termination by the Client under clause 16.3.
- 16.8 The Client shall not be liable under clause 16.7 to pay any sum which, when added to any sums paid or due to the Consultant under the Contract, exceeds the total sum that would have been payable to the Consultant if the Contract had not been terminated prior to the expiry of the Term or agreed extension thereto.
- 16.9 The Consultant shall co-operate free of charge with the Client and any new provider of the Service who is appointed by the Client to continue or take over the performance of the Contract in order to ensure an effective handover of all work then in progress.
- 16.10 Upon termination or expiration of this Contract the Consultant shall return to the Client forthwith all Client's Data and Data and Reports and any other property equipment or information belonging to the Client and any part of the Consultancy Fee which relates to any part of the Service which will not then be carried out by the Consultant.

## **17. Severability**

- 17.1 If any provision in this Contract shall be adjudged by a court to be unlawful void or unenforceable such provision shall to the extent required be severed from this Contract but shall in no way affect the validity or enforceability of the remainder of this Contract.

## **18. Waiver**

- 18.1 No forbearance or delay by either Party in enforcing their respective rights under this Contract will prejudice or restrict the rights of that Party to enforce

such rights and nor shall they be deemed to have waived those rights unless expressly provided in writing but where any rights have been so waived by a party in accordance with the terms hereof this shall not be deemed to affect any of their other rights under this Contract.

**19. Notices**

19.1 All notices consents or approvals given under this Contract shall be in writing and shall be personally delivered or sent by pre-paid first class post to the Parties at their respective addresses shown herein below or to such other address in England or Wales as may be notified to the other party in writing in accordance with this clause 19.1 AND in the case of delivery by post the notice consent or approval will be deemed to have been delivered two working days after the date of posting.

19.2 For the Client

Address:

For the attention of:

Tel:

Fax:

For the Consultant

Address:

For the attention of:

Tel:

Fax:

**20. Force Majeure**

20.1. For the purpose of this Contract, "Force Majeure" means any event or occurrence which is outside the reasonable control of a Party or the Parties, and which is not attributable to any act or failure to take preventive action by the Party concerned, including (but not limited to) governmental regulations, fire and flood. It does not include any industrial action occurring within the Consultant's organisation or the organisation of any of its sub-contractors.

20.2 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Contract (other than a payment of money which is due and payable) if such delay or failure is the result of a Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable

endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure. However, if the Force Majeure prevents either Party from performing all of its obligations under the Contract for a period in excess of 3 (three) months, either Party may terminate the Contract by notice in writing with immediate effect.

20.3 Any failure or delay by the Consultant to perform its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Consultant.

## **21. Governing Law and Jurisdiction**

21.1 This Contract is governed by English Law and the Parties agree to submit to the exclusive jurisdiction of the English Courts with respect to any matter arising from it.

## **22. Contracts (Rights of Third Parties) Act 1999**

22.1 It is hereby expressly agreed and declared that none of the provisions of this Contract are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on any person who is not named as a party to this Contract

## **23. Legal Status of the Parties**

23.1 Other than where expressly stated otherwise herein nothing in this Contract shall be construed or have effect as constituting any relationship of employer and employee or partners or a joint venture or a relationship of principal and agent between the Client and the Consultant or between the Client and any employee or agent of the Consultant.

23.2 The Client is not obliged on the expiration or termination of this Contract to offer the Consultant ongoing work or any further work and the Consultant is not obliged to accept any such offer of work made by the Client.

23.3 Neither Party shall represent that it has the authority to bind or make commitments on the other Party's behalf.

23.4 In performing the Service the Consultant shall be acting as principal and not as agent of the Client. Accordingly, the Consultant shall not (and shall procure that its employees, agents and sub-contractors do not) say or do anything that might lead any other person to believe that the Consultant is

acting as the agent of the Client.

**24. Entire Agreement**

24.1 This Contract constitutes the entire agreement between the Parties relating to the subject matter hereof. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause 24.1 shall not exclude liability in respect of any fraudulent misrepresentation on the part of either Party prior to the commencement of the Contract or the date of the Contract (whichever is the earlier of the two).

**25. Publicity, Media and Official Enquiries**

25.1 Except with the written consent of the other Party, neither Party shall make any press announcements in respect of the Contract or publicise the Contract or any part thereof in any way.

25.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of Clause 25.1 by all their servants, employees, agents, professional advisors and consultants. The Consultant shall take all reasonable steps to ensure the observance of the provisions of Clause 25.1 by its sub-contractors.

25.3 The provisions of this Clause 25 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

**26. Dispute Resolution**

26.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 30 days of either Party notifying the other of the dispute. Such efforts shall involve the escalation of the dispute to the Executive Director holding the relevant portfolio (or equivalent) of each Party.

26.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

26.3 Subject to clause 26.2, the Parties shall not institute court proceedings until the procedures set out in clauses 26.1 have been completed.

**27. Local Government Ombudsman**

27.1 Where any investigation by a Local Government Ombudsman (as appointed



by the commission for Local Administration in England) takes place the Consultant shall:

- (a) provide any information requested in the timescale allotted
- (b) attend any meetings as required and permit its personnel to attend
- (c) promptly allow access to an investigation of any documents deemed relevant
- (d) co-operate fully and promptly in every way required during the course of the investigation.

27.2 For the avoidance of doubt, no additional payment to the Consultancy Fee shall be made to the Consultant for performing the requirements set out in Clause 28.1.

**AS WITNESS the Parties hereto have signed this contract in duplicate under the hand of a duly authorised officer the day and year first before written**



Signed by: \_\_\_\_\_

Dave Levy, Director of Supply Chain on behalf of

The Mayor and Burgesses of the  
London Borough of Waltham Forest

\_\_\_\_\_

Signed by :

[Consultant's Company Name]

\_\_\_\_\_

Director

Witnessed by:

Name:

Address:

Signature: \_\_\_\_\_

**SCHEDULE 1  
SPECIFICATION**

**SCHEDULE 2**  
**THE CONSULTANCY FEE**

## SCHEDULE 3

### SPECIAL DPS TERMS INCORPORATED INTO THE CONTRACT

#### **1. Definitions**

1.1 The following words and phrases shall have the following meanings except where the context requires otherwise:-

**Accreditation and Enrolment:** the evaluation of a supplier's request to participate in the DPS and the subsequent admittance to the DPS of suppliers that fulfil the Council's Selection Criteria.

**Dynamic Purchasing System or "DPS":** the dynamic purchasing system operated via the Technology, which applies the procurement methodology provided for by Regulation 34 of the Regulations, as amended from time to time.

**Offer:** the Supplier's tender for the desired Services in response to the Council's Requirement.

**Open for Offers:** the period during which time the Supplier can create and submit their Offer within the Technology.

**Regulations:** the Public Contract Regulations 2015, as amended from time to time.

**Replacement Services:** services that are identical or substantially similar to any of the Services to be provided the Supplier, which the Council receives in substitution by a Replacement Supplier who has already been admitted to the DPS, following the termination or expiry of a Agreement with the Supplier.

**Replacement Supplier:** a third party supplier of Replacement Services admitted to the DPS and appointed by the Council from time to time.

**Requirement:** a detailed specification and request for Services made by the Council via the Technology.

**Selection Criteria:** the requisite criteria that a supplier must meet and maintain throughout the term of the DPS in order to successfully complete their Accreditation and Enrolment into the DPS.

**Self-Bill Invoice:** the invoice produced via the Technology on the Supplier's behalf, through which the Technology Provider shall process payment.

**Self-Billing Agreement:** an agreement between the Supplier and the Council, whereby the Supplier agrees to receive pre-populated Self-Bill Invoices generated through the Technology for the billing of the appropriate price and payment.

**Agreement:** the Parties' acceptance of a supplier's final Offer in response to the Council's corresponding Requirement incorporating the terms of this Supplier Agreement.

**Receipt:** the agreed record within the Technology of the completed delivery of Services as quantified and agreed between the Parties.

**Signature Document:** the signed document between the Council and the Supplier which constitutes the Parties' agreement to this Supplier Agreement and the creation of the overall Contract.

**Supplier Agreement:** the terms and conditions set out in this document.

**Supplier Entry Guide:** the entry guide issued by the Council detailing the operation of the DPS.

**Technology:** the proprietary web-based software owned and operated by the Technology Provider, currently called AdamProcure.co.uk or such other technology as agreed between the Parties.

**Technology Provider:** the owner and provider of the Technology, adam HTT Limited t/a *adam* (registered company #07718565), who shall also act as the Council's payment service provider.

## **2. Scope**

**2.1** This Supplier Agreement governs the relationship between the Council and the Supplier in respect of the provision of Services by the Supplier to the Council when procured and/or transacted through the DPS. The Supplier must agree to the terms of the Supplier Agreement prior to acceptance into the DPS. For the avoidance of doubt, the Supplier's acceptance of the Supplier Agreement shall not guarantee the Supplier's acceptance into the DPS, which shall be subject to successful completion of the Accreditation and Enrolment

**2.2** In the event of a conflict between the terms of any of the Contract Documents, then the documents shall take precedence in the following order:

- 2.2.1 The Agreement;
- 2.2.2 The Supplier Agreement;
- 2.2.3 The Supplier Entry Guide;
- 2.2.4 The Self-Billing Agreement

**2.3** The Council may at its absolute discretion and from time to time, order Services from the Supplier in accordance with the procedure set out in the Supplier Entry Guide. The Supplier acknowledges that there is no obligation whatsoever on the Council to purchase any Services from the Supplier during the Term. Notwithstanding the fact that the Council has followed the procedure set out in this Supplier Agreement or Supplier Entry Guide, the Council shall be entitled at all times to decline to make an award for its Requirement.

**2.4** The Council may update the Supplier Entry Guide at any time throughout the Term of the Contract, provided that the Council provides all suppliers with fair and open access to such changes with reasonable advance notice.

**2.5** The Supplier warrants that all information submitted within the Accreditation and Enrolment is correct and accurate at the time of submission and shall ensure that all necessary and appropriate Accreditation and Enrolment checks and details are kept up to date throughout the Term. In the event that the Supplier's status or compliance to any of the Selection Criteria changes throughout the Term of the Contract, then the Supplier shall inform the Council immediately and the Supplier acknowledges that the Council reserves the right to, at its sole discretion, expel the Supplier from the DPS, dependent upon the nature of such changes,

particularly if such changes are to the detriment of the performance or standards of this Contract.

**2.6** The Council reserves the right to request re-submission of any Selection Criteria or other Accreditation or Enrolment details throughout the duration of the Contract, and may perform audit checks of any such or existing Accreditation or Enrolment information.

**2.7** The Supplier acknowledges that once agreed via the Technology, the Agreement is a legally binding agreement between the Suppliers and the Council and must be adhered to in accordance with the terms of the Contract.

### **3. DPS Process**

The Council shall:

3.1 offer all potential suppliers unrestricted, direct access to all appropriate documents, including the template Contract Documents and Selection Criteria by electronic means and to any additional documents relating to the provision of the Service from the date of publication of the contract notice to the date when the system ceases to be operated.

3.2 give any potential suppliers the opportunity to submit a 'request to participate' within the DPS via the Technology to proceed through the Accreditation and Enrolment process. Admission into the DPS is subject to the Supplier satisfying the Selection Criteria, passing the Council's review of the request to participate, and submitting a request to participate which complies with the Contract Documents and any additional documents produced by the Council.

3.3 complete the evaluation of a request to participate within 10 working days from the date of its submission or such longer period as the Council may determine

3.4 invite all applicable suppliers who have been admitted to the DPS to submit an Offer for each applicable Requirement within a time limit specified by the Council.

3.5 enter into this Agreement with the supplier who submits the Offer which best meets the Requirement and its appropriate award criteria, as may be specified in the Contract Documents, when choosing to enter into a contract via the DPS.

### **4. Procurement Process**

4.1 The Supplier acknowledges and accepts that Services shall be procured and/or transacted in accordance with the procedures detailed in the Contract.

4.2 The Supplier shall submit all Offers within the Technology in accordance with the procedures detailed in the Supplier Entry Guide, this Supplier Agreement, and as may be further supplemented within the Requirement.

4.3 The Supplier shall submit all Offers within the Technology within a timely manner and no later than the deadlines established within the requisite Requirement or

shall otherwise be excluded from the procurement process within the Technology.

- 4.4 The Supplier shall submit all Receipts within the Technology within a timely manner. The Council reserves the right to consolidate each Receipt into such frequent Self-Bill Invoices as set out in the Self-Billing Agreement.
- 4.5 The Supplier agrees and acknowledges that all transactions governed by the Contract will be processed via the Technology. The Supplier shall not endeavour to process Requirements or Services for the Council that have been subject to the DPS outside of the Technology.
- 4.6 The Supplier shall ensure that the Services are provided in accordance with the Requirements, the consequent Agreement and the Contract Documents overall. Further, on request at any time, the Supplier must be able to evidence compliance with the same.
- 4.7 Where a Requirement is issued to the Supplier it shall state the type of or part of the Services required including the Council's necessary timescale for delivery of those Services.
- 4.8 The Supplier acknowledges that users of the Technology may submit a quality review or summary of the Supplier's performance under this Contract. Such reviews shall comprise the opinion of those submitting such comments only and not those of the Council. The Technology shall have a facility to report any abusive or derogatory comments, and the Council shall deal with such instances as the Council deems reasonably necessary.
- 4.9 If an Offer appears to be abnormally low, the Council may reject the Offer but only if it has:
- a) requested in writing from the Technology Provider details of the constituent elements of the Offer which are considered to contribute to the Offer being abnormally low;
  - b) taken account of the evidence supplied by the Supplier; and
  - c) verified those constituent elements with the Supplier;

and concludes that the Supplier would not be able to carry out the Services to the required standards.

- 4.10 For the avoidance of doubt where condition 4.9 above in relation to the treatment of abnormally low bids conflicts with regulation 69 of the Regulations, regulation 69 shall take precedence.
- 4.11 The amount of time provided to the Supplier to respond to a Requirement shall be detailed within the Technology, and shall, in any event, not exceed the following parameters:

**The time period shall not exceed one calendar month.**

- 4.12 The Supplier shall neither subject the Council, the Technology Provider or the Technology, to derogatory or abusive treatment nor commit any act or omissions that would, bring the Council or the Technology Provider into disrepute. The Supplier acknowledges that in any such circumstances the



Council or Technology Provider has the right to suspend the Supplier from activities within the Technology, in addition to any other remedies available in this Contract.

**SCHEDULE 4  
SELF BILLING AGREEMENT**