

**DATED**

**ESSEX COUNTY COUNCIL**

**AND**

**[INSERT LANDOWNER]**

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**COLLABORATION AGREEMENT FOR  
[Essex Local Electric Vehicle Infrastructure Project ]**

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**THIS AGREEMENT** is dated [insert date]

## **PARTIES**

- (1) ESSEX COUNTY COUNCIL of County Hall, Market Road, Chelmsford, ESSEX, CM1 1QH ("**ECC**").
- (2) [insert details] ("Partner")

## **BACKGROUND**

- (A) The parties wish to enable the installation and operation of EV Charge Points in the County of Essex, including in off-street car parks used by residents and visitors. ECC has secured funding from the Local Electric Vehicle Infrastructure (LEVI) capital fund and is seeking to utilise this funding to leverage private investment from Charge Point Operators (CPOs) who will install, own, operate, manage and maintain EV Charge Points in Essex under a concession agreement with ECC.
- (B) Whilst ECC is the contracting party of the EV Charging Contract, it is also contracting for the Services to be provided for partner organisations who wish to have EVCPs installed and operated at sites owned by them within or substantially within the County of Essex and who are identified as at the date of the EV Charging Contract, or subsequently agreed by the parties as being entitled to the Services at their site(s) pursuant to the EV Charging Contract. The Partner will enable this through entering into this collaboration agreement and by leasing land to the Service Provider.
- (C) It is the intention of ECC and the Service Provider who has entered into the EV Charging Contract for the provision of 7-22kW Electric Vehicle Charging Equipment, and all necessary services required to effect the same and back office services (**the "Services"**) described in the EV Charging Contract.

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

The definitions and rules of interpretation in this clause apply in this Agreement.

**Business Day:** a day (other than a Saturday or Sunday) on which the banks are open for domestic business in the City of London.

**Commencement Date:** means *[date]* or such other date as may be mutually agreed in writing between the parties

**EV Charging Contract:** the contract for the Services between ECC and [the Service Provider]

**Confidential Information:** all know-how and other information whether commercial, financial, technical or otherwise relating to the business, affairs or methods of all or any party, which is contained in or discernible in any form whatsoever (including without limitation software, data, drawings, films, documents and computer-readable media) whether or not marked or designated as confidential or proprietary or which is disclosed orally or by demonstration and which is described at the time of disclosure as confidential or is clearly so from its content or the context of disclosure.

**Dispute Resolution Procedure:** means the procedure set out in Clause 14 of this Agreement

**Data Protection Legislation:** means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation:

- (a) the UK GDPR;
- (b) the DPA 2018;
- (c) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and
- (d) the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and which are applicable to a Party.

**Devolution and LGR Legislation:** all applicable legislation in force from time to time (as amended) relating to devolution and LGR including without limitation:

- the Local Government and Public Involvement in Health Act 2007
- the Local Democracy, Economy and Construction Act 2009 ;
- the Levelling Up and Regeneration Act 2023;

- any additional legislation resulting from the English Devolution White Paper published on 16 December 2024;
- any subordinate legislation; and
- any other legislation repealing, implementing, enabling or replacing the same.

**EIR:** 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.

**Electric Vehicle Charging Equipment:** Electric Vehicle Charging Equipment, including EVCPs and all elements of their directly associated civil, mechanical and electrical infrastructure from the network connection through to the connector used by an end user

**EV Charging Contract:** The concession agreement between ECC and the Service Provider.

**EVCP(s):** Electric Vehicle Charge Point(s). An electrical device designed and used for supply electricity for the purpose of charging up to two electric vehicles

**EVCP Site(s):** as detailed in Appendix 1, of which the Partner is the freehold or leasehold owner with Registered Title [ ];

**FOIA:** means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Force Majeure:** means any cause materially affecting the performance by a party of its obligations under this Agreement arising from any act, event, omission, happening or non-happening beyond its reasonable control including, without limitation, acts of God, strikes, lock-outs or other industrial disputes, war, riot, fire, flood, or any disaster affecting either one of the parties.

**Intellectual Property or IPR:** any and all patents, trademarks, trade names, copyright, moral rights, rights in design, rights in databases, know-how and all or other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to them and the right to apply for registration of them.

**LED:** Law Enforcement Directive (*Directive (EU) 2016/680*).

**LGR:** local government reorganisation.

**Material:** all data, text, graphics, images and other materials or documents created, used or supplied by a party in connection with this

Agreement unless before the first use or supply, the party notifies the others that the data, text supplied is not to be covered by this definition.

**Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service.

**Services:** the Services to be delivered by or on behalf of the Service Provider in line with the terms of the EV Charging Contract;

**Service Provider:** [insert name of Service Provider] responsible for the delivery of the Services under the EV Charging Contract

**Successor Body:** means a successor body or successor bodies to the Council (as applicable) as a result of LGR . For the avoidance of doubt, such successor body or bodies may be, without limitation, a unitary authority, a combined authority, a combined county authority, a strategic authority or any other status determined pursuant to the Devolution and LGR Legislation.

**Transfer:** the transfer of this Agreement from the Council to a Successor Body in order to give effect to any order(s) or regulation(s) arising from the Devolution and LGR Legislation

- 1.1 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.2 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.
- 1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Words in the singular shall include the plural and vice versa.
- 1.5 A reference to one gender shall include a reference to the other genders.
- 1.6 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.

- 1.7 A reference to **writing** or **written** includes e-mail.
- 1.8 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.
- 1.9 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.
- 1.10 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.11 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:
  - 1.12.1 the Agreement;
  - 1.12.2 the Schedules of the Agreement.

## **2. TERM**

- 2.1 This Agreement shall take effect on [insert date] is 15 years with a one time 12-month extension and shall expire on the earlier of:
  - 2.1.1 date of expiry or termination of the EV Charging Contract; or
  - 2.1.2 the date this Agreement is terminated by the parties.
- 2.2 If the EV Charging Contract is extended pursuant to its terms, this Agreement shall be extended in line with the EV Charging Contract.
- 2.3 The term of this Agreement shall be coterminous with the EV Charging Contract.

### **3. PRINCIPLES AND KEY OBJECTIVES**

- 3.1 The parties have agreed to enter into this Agreement in respect of setting out the duties and obligations of each party with respect of achieving economies of scale and commonality of approach.
- 3.2 The parties agree to adopt the following principles when carrying out the Agreement as follows:
  - 3.2.1 Mutual co-operation and collaboration
  - 3.2.2 Accountability
  - 3.2.3 Transparency
  - 3.2.4 Mutual benefits
  - 3.2.5 Adhering to statutory requirements and best practice
  - 3.2.6 Acting in a timely manner
  - 3.2.7 Deploying appropriate resources
  - 3.2.8 Acting in good faith to support achievement of any key objectives and compliance with these principles.
- 3.3 The parties have agreed common goals and objectives which shall apply throughout the terms of this Agreement in respect of the Services which include but are not limited to:
  - 3.3.1. Provide support and challenge to the programme
  - 3.3.2. Provide support to resolve any challenges and blockages
  - 3.3.3. Ensure timely decisions can be made regarding involvement and ongoing engagement in the Services, deliverability and sustainability
  - 3.3.4. Support communication and stakeholder engagement around the programme.
- 3.4 In order to achieve these objectives, the parties agree that they will work together with mutual trust, good faith and in an open, co-operative and collaborative manner.
- 3.5 The parties agree that, as a general principle, they will act in the spirit of mutual partnership and co-operation in respect of this Agreement.
- 3.6 The Partner agrees that the terms and conditions of the EV Charging Contract shall apply to the provision of the Services by the Service Provider at the EVCP Site(s).

- 3.7 The Partner agrees that ECC may, at its sole discretion, withdraw any EVCP Site from this Agreement due to safety concerns, special restrictions, financial issues, electrical issues, disputes or other problems affecting the installation of Electric Vehicle Charging Equipment at that EVCP Site. ECC will inform the Partner in writing of any such decision and, where possible, will seek an alternative.
- 3.8 The expiry or termination of this Agreement shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such expiry or termination.

#### **4. DUTIES OF THE PARTIES**

- 4.1 The parties will act properly and expeditiously in the performance of their respective obligations in this Agreement and do such reasonable acts as may be consistent with or incidental to the attainment of any of the objectives of this Agreement.
- 4.2 The Partner acknowledges that ECC may, in accordance with provisions therein, vary, terminate or rescind the EV Charging Contract or any part of it, without the consent of the Partner. Where such changes relate specifically to an EVCP Site(s) owned by the Partner, ECC will give notice of this to the Partner.
- 4.3 The Partner to the EVCP Site(s) shall provide in a timely manner all assistance and the information in relation to the title that is necessary and/or reasonably required by ECC to enable ECC and the Service Provider to fulfill its obligations in the delivery of the Services at the EVCP Site.
- 4.4 The Partner warrants and undertakes that it shall, timely and diligently, give and/or procure to give:
- (a) instructions and approvals in relation the EVCP Site(s), as required under this Agreement to be given by ECC to the Service Provider in relation to all matters requiring instructions, agreement and approval;
  - (b) instructions and approvals of design plans and installation programme, including the number and location of EVCPs and Electric Vehicle Charging Equipment;
  - (c) Confirmation, in writing, of agreement on the commencement date for the performance of the Services by the Service

Provider at the EVCP Site(s);

- (d) Partner's building insurers' approval to the Service Provider's installation of EVCPs and all Electric Vehicle Charging Equipment at the EVCP Site(s);
- (e) instructions and approvals, where it considers them appropriate, for the Services to be delivered at additional Sites owned by the Partner;
- (f) provision of all information required by Law or an order of the courts of England to be given in relation to the performance of the Services at the EVCP Site and all other information which ECC has to provide to the Service Provider under the EV Charging Contract;
- (g) any other information or documents that is reasonably required by the ECC to discharge its duties and obligations under the EV Charging Contract and/or this Agreement.

4.5 The Partner further warrants and undertakes that all information supplied, and statements and representations made by or on behalf of the Partner in relation to the EV Charging Contract are true and accurate at the time to the best of the Partner's information, knowledge and belief, such information, statements and representations were made to ECC and/or the Service Provider and during the term of this Agreement.

4.6 The Partner shall attend meetings with the ECC project team where invited by ECC at reasonable notice and where the meetings are concerned with the EVCP Site(s), and respond to any questions or requests made by attendants of any of the aforesaid meetings.

4.7 The Partner shall check and verify the information, reports and all other data sent to it by the Service Provider and/or ECC in relation to the performance of the Service Provider at the EVCP Site.

4.8 The Partner hereby unequivocally acknowledges and agrees that the enforcement rights granted to the Partner under the EV Charging Contract are subject to the following provisions:

- (a) ECC may enforce any provision of the EV Charging Contract;
- (b) any claim from the Partner under the Contracts (Rights of Third Parties) Act 1999 to enforce the EV Charging Contract shall be brought by ECC if reasonably practicable for ECC and Partner to do so; and
- (c) the Service Provider's limits and exclusions of liability in the

EV Charging Contract shall apply equally to any claim to enforce the EV Charging Contract made by ECC on behalf of the Partner.

- 4.9 The Partner shall ensure that the EVCP(s) and the parking bays associated with them at the EVCP Site(s) are accessible 24/7, 365 days a year.
- 4.10 The Partner may continue to charge users of the EVCP Site for parking, including parking on EV charging bays associated with the EVCPs installed by the Service Provider, if it does so as of the date of this Agreement. ECC recommends that the Partner does not charge car park users for parking on the bays associated with the EVCP(s).
- 4.11 The Partner shall lease the land on which the EVCP(s) and the feeder cabinet sit and two parking bays per EVCP installed on the site to the Service Provider at no cost at any EVCP Site where the Partner owns the parking bays. This shall not apply to any EVCP Site which is a stretch of footway owned by the Partner where ECC owns the carriageway.
- 4.12 The Partner shall allow the Service Provider or the Service Provider's sub-contractor to paint appropriate markings on the parking bays associated with the EVCP(s) and display signage next to the EVCP(s) on one pole for EVCP Site.
- 4.13 The Partner shall be responsible for the upkeep and maintenance of the surface of any land at the EVCP Site(s) of which it is the Landowner and that will maintain the surface of any parking bays that it owns and which are dedicated for users of the EVCP(s). The Partner shall inform ECC and the Service Provider at least 10 Business Days in advance of any planned maintenance work which would temporarily prevent access to the EVCP(s) at any EVCP Site.
- 4.14 The Partner agrees that, unless otherwise decided by ECC in consultation with the Partner, at the expiration or termination of the EV charging contract the Service Provider shall remove all EVCPs and associated above-ground Electric Vehicle Charging Equipment at its own cost, make safe all underground electrical apparatus so that it is possible to re-use in the future and make good the surface of the EVCP Site after EVCP removal, transferring ownership of all remaining underground apparatus for the EVCPs at the EVCP Site to the Partner at nil cost. The Partner agrees to take ownership of the remaining underground EVCP apparatus.

- 4.15 The Partner may require the removal of the EVCPs and associated EVCI at the EVCP Site(s) of which it is the Landowner at the expiration or termination of this Agreement or the EV Charging Contract, agreeing to take ownership of all grid connections and other underground apparatus remaining under the surface of the EVCP Site after the removal of all that can be removed by the Service Provider at its own cost.

## **5. THE SERVICES**

- 5.1 The Partner acknowledges that ECC entered into the EV Charging Contract with the Service Provider for the benefit of ECC and the Partner.
- 5.2 The Partner agrees that the final decision on the power delivery of the EVCP(s) shall be made by ECC in consultation with the Service Provider subject to assessment of electricity grid capacity at the EVCP Site(s). ECC will inform the Partner of the decision made.
- 5.3 ECC shall give the Partner written notice at least 6 months from the date upon which the EV Charging Contract is due to expire for consideration of the future commissioning arrangements to ensure that any continuing collaboration still meets the principles and key objectives in clause 3 and 4.
- 5.4 The Partner acknowledges and confirms that they have carried out all necessary and relevant compliance relevant to entering into this Agreement and the provision of the Services by the Service Provider.
- 5.5 The Partner acknowledges and confirms that ECC shall not be liable to them or any third party in relation to any claims related to the provision of the Services or this Agreement.

## **6. EARLY TERMINATION**

- 6.1 The Partner agrees that it shall not terminate its land lease agreement with the Service Provider on less than six months' notice, except in an event of Force Majeure. If the Partner terminates its land lease agreement with the Service Provider, the Service Provider will remove the EVCP(s) and associated EVCI from the relevant EVCP Site(s) and the Partner will be liable to the Service Provider for any reasonable costs associated with the removal. ECC shall not be liable to the Partner or the Service Provider for any costs. The Partner will take on ownership of the underground apparatus.

- 6.2 The withdrawal by ECC of an EVCP Site or the termination of a land lease by the Partner, where this means there are no EVCP Sites owned by the Partner that will be subject to EVCP installation, shall be construed as a termination of this collaboration agreement.
- 6.3 The parties shall use their reasonable endeavours to minimise any losses arising from the termination of this Agreement.

## **7. CONSEQUENCES OF TERMINATION**

- 7.1 Upon expiry or determination of this Agreement howsoever arising:
- 7.1.1 this Agreement shall continue to bind the parties in respect of any continuing financial liabilities which have arisen or may arise out of performance of this Agreement and/or the Provider Agreement
  - 7.1.2 any provisions of this Agreement that expressly or by implication is intended to come into or continue force on or after expiry, including clauses 7 (Consequences of Termination), 9 (Indemnities), 10 (Insurance), 11 (Intellectual Property), 13 (Dispute), 15 (Confidentiality), 16 (Data Protection), 17 (Freedom of Information), 28 (Records and Access), 29 (Governing Law and Jurisdiction), shall remain in full force and effect
  - 7.1.3 termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed before expiry or termination
  - 7.1.4 each party shall, without delay, return to the other party Personal Data (if any) and Confidential Information belonging to the other party in its possession and all such data and information to be returned in a format to be reasonably specified by the receiving party
  - 7.1.5 the parties shall co-operate and provide such transitional assistance reasonably required to facilitate the smooth handover of the Services.

## **8 ROLES AND RESPONSIBILITIES OF THE PARTIES**

- 8.1 The parties shall designate persons respectively to be the authorised representative on behalf of that party, the first such persons being (**“the Authorised Representatives”**):

8.1.1 Essex County Council:

Name:

Address: County Hall, Chelmsford, CM1 1QH

Telephone number:

Email:

8.1.2 Partner:

Name:

Address:

Telephone number:

Email:

## **9 INDEMNITIES**

9.1 In the event that any proceedings or claims are instituted against any of the parties arising out of this Agreement as a result of ECC's actions or failure to provide the whole or part of the Services in accordance with the terms of this Agreement, then the costs of defending the proceedings or claims and the payment of any damages or settlement arising out of the proceedings or claims shall be paid by ECC (save to the extent that such failures were contributed to by any act or default of the Partner).

9.2 In relying on the indemnities set out in clause 9.1 above, both parties agree that they shall:

9.2.1 promptly notify the indemnifying party in writing of known circumstances giving rise to a claim

9.2.2 not admit, compromise or settle any claim without the consent of the indemnifying party except where the requirement for such consent would be unreasonable in the circumstances of the case

9.2.3 take all reasonable steps to mitigate any claim for which an indemnity may be sought.

9.3 The Partner shall indemnify and keep indemnified ECC against:

- (a) any and all claims (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part), actions, investigations, demands, proceedings or judgments, joint or several, threatened, brought or established against ECC (the "Claims"); and
- (b) any and all liabilities, losses, damages, costs, charges or expenses (including all legal fees and other awards, costs, payments, charges and expenses) which ECC may pay or incur as a result of or in relation to any Claims,

which in any case arise directly or indirectly in connection with, out of or in relation to:

- (i) the performance or breach of any provisions of this Agreement by the Partner;
- (ii) the performance or breach of any provisions of this Agreement by the Partner which, directly or indirectly, cause, contribute to or result in ECC being held liable for its failure in fulfilling its obligations under the EV Charging Contract;
- (iii) the negligence, recklessness, tortious acts or wilful misconduct of the Partner, its employees, agents or sub-contractors in discharging its obligations under this Agreement;
- (iv) any default, unauthorised act or wilful omission of the Partner, its employees, agents or sub-contractor(s) in the discharging its obligations under this Agreement; or
- (v) the non-compliance by the Partner, its employees, agents or sub-contractor(s) with any applicable law, or regulation, order or requirement of any government agency or authority in discharging its obligations under this Agreement.

In relation to the indemnity in clause 9.4, the Partner's total liability to ECC shall not exceed £1,000,000 in any given financial year.

## **10 INSURANCE**

10.1 Each party shall ensure it puts in place and keeps in place throughout the duration of this Agreement appropriate levels of insurance acceptable to each party's insurance department, and any other such insurance which may be required by law, in respect of the commissioning of the Services.

## **11 INTELLECTUAL PROPERTY**

11.1 Each party shall retain all Intellectual Property in its Material.

- 11.2 The Partner shall grant ECC a transferable licence to use its Materials.
- 11.3 ECC shall grant Partner a transferable licence to use its Materials.
- 11.4 Each party warrants that it has or will have the necessary rights to grant any licences in respect of any Intellectual Property Material to be licensed.
- 11.5 Each party agrees to execute such further documents and take such actions or do such things as may be reasonably requested by the other party to give full effect to the terms of this Agreement.
- 11.6 This clause shall remain in force in respect of any of the matters arising from the performance of or withdrawal of either party under this Agreement.

## **12 FORCE MAJEURE**

- 12.1 No party shall be relieved from its obligations under this Agreement to the extent that by reason of an event of Force Majeure it is not able to perform its obligations under this Agreement. However, during the continuance of an event of Force Majeure no party shall be entitled to any compensation or other payment by reason of the occurrence or the continuance of an event of Force Majeure.
- 12.2 Should an event of Force Majeure continue for more than ten (10) Business Days, this Agreement may be terminated by any party on the giving of five (5) Business Days' notice and the provisions of clause 7 shall apply (and a reasonable time passed for exit shall be agreed between the parties).
- 12.3 On the occurrence of a Force Majeure event, the Affected Party shall notify the other Party within twenty-four (24) hours. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

## **13 DISPUTE RESOLUTION PROCEDURES**

- 13.1 Any dispute or difference arising out of or in connection with this agreement (whether such disputes are in contract or tort or arise

out of or under any rule of common law or equity or under any statute) shall be resolved pursuant to this clause 13. 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.

13.2 The parties shall attempt in good faith to negotiate a settlement to any Dispute between them arising out of or in connection with the Agreement within seven (7) days of either party notifying the other of the Dispute. Such efforts shall involve the escalation of the Dispute ultimately to the Authorised Officer of each party.

13.3 In the event that a Dispute is not resolved within seven (7) days of it having been referred to the Authorised Officer for discussion then either Party may refer it to Director or equivalent officer of each party for resolution and the same shall meet for discussion within fourteen (14) days thereafter or such longer period as the parties may agree.

13.4 If the Dispute is not resolved within twenty (20) days of escalation of the dispute in accordance with clauses 13.1 to 13.3, the parties shall refer the dispute to mediation in accordance with the CEDR Model Mediation Procedure.

13.5 If the parties cannot agree on a mediator, the parties shall appoint a mediator nominated by CEDR.

13.6 The parties shall use their reasonable endeavours to conclude the mediation within forty (40) days of referral of the dispute to mediation.

13.7 If:

13.7.1 either party is dissatisfied with or otherwise wishes to challenge the Mediator's decision; or

13.7.2 both parties agree

then either party may, within fifteen (15) Days of the conclusion of the mediation, notify the other party of its intention to refer the dispute to litigation and for such purposes the parties agree that

the Courts shall have exclusive jurisdiction in relation to all matters in respect of this Agreement.

13.8 Where any Dispute is referred to litigation pursuant to clause 13.7, the Courts shall have full power to disregard, open-up, review and/or revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement, to vary or cancel the recommendations of the Mediator and, where appropriate, to order financial compensation to be paid by one party to the other.

13.9 The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this clause and shall give effect forthwith to every recommendation of the Mediator and the Courts delivered under this clause.

#### **14 VARIATION**

14.1 This Agreement can only be varied or amended provided that such variation or amendment is agreed in writing by the Authorised Representatives or such other authorised signatory by ECC and the Partner.

#### **15 CONFIDENTIALITY**

15.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, a party shall keep the other party's Confidential Information confidential and shall not:

15.1.1 use such Confidential Information except of the purpose of performing its rights and obligations under or in connecting with this Agreement; or

15.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 15.

15.2 The obligation to maintain confidentiality of Confidential Information does not apply to any confidential information:

15.2.1 which the other party confirms in writing is not required to be treated as Confidential Information;

- 15.2.2 which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
  - 15.2.3 which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the FOIA or EIRs;
  - 15.2.4 which is in, or enters, the public domain other than through any disclosure prohibited by this Agreement;
  - 15.2.5 which a party can demonstrate was lawfully in its possession prior to receipt from other party; or
  - 15.2.6 which is disclosed by a party on a confidential basis to any central government or regulatory body.
- 15.3 A party may disclose the other party's Confidential Information to those of its representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this Agreement, provided that:
- 15.3.1 it informs such representative of the confidential nature of the Confidential Information before disclosure; and
  - 15.3.2 it procures that its representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this Agreement,
  - 15.3.3 at all times, it is liable for the failure of any representatives to comply with the obligations set out in this clause 15.
- 15.4 No party shall, and shall procure that any employees do not, use the other party's Confidential Information received otherwise than for the purposes of this Agreement.

## **16 DATA PROTECTION**

- 16.1 The Parties shall (and shall procure that any of its Staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the Data Protection

Legislation and the Parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with this Agreement.

## **17 FREEDOM OF INFORMATION**

17.1 Each party acknowledges that the other party is subject to the requirements of the FOIA and the EIRs and each party shall at its own expense, where reasonable, assist and co-operate with other party to enable the parties to comply with these information disclosure obligations.

17.2 Where a party receives a request for information under either the FOIA or the EIR in relation to information which it holds on behalf of another party in relation to the Services it shall:

17.2.1 transfer the request for information to the other party as soon as practicable after receipt and in any event within two (2) Business Days of receiving a request for information

17.2.2 provide the other party with a copy of all information in its possession in the form that the party reasonably require within ten (10) Business Days (or such longer period as the party may specify) of the party requesting that information unless the cost of compliance exceeds the limit set down pursuant to FOIA (and provides reasonable proof of this to the other party)

17.2.3 provide all necessary assistance as reasonably requested by the other party to enable the party to respond to a request for information within the time for compliance set out in the FOIA or the EIR.

17.3 Where a party receives a request for information under the FOIA or the EIR which relates to this Agreement, it shall inform the other party of the request for information as soon as practicable after receipt and in any event at least five (5) Business Days before disclosure and shall use all reasonable endeavours to consult with the other party prior to disclosure and shall consider all representations made by the other party in relation to the decision whether or not to disclose the information requested.

17.4 Subject to clauses 17.2 and 17.3, each party shall be responsible for determining, in their absolute discretion, whether any information, for which they are the Data Controller and therefore responsible for responding to requests under the FOIA or the EIR:

17.4.1 is exempt from disclosure under the FOIA or the EIR; and

17.4.2 is to be disclosed in response to a request for information.

17.5 Each party acknowledges that the other party may be obliged under the FOIA or the EIR to disclose information:

17.5.1 without consulting with the other party where it has not been practicable to achieve such consultation; or

17.5.2 following consultation with the other party and having taken its views into account.

## **18 PUBLICITY**

18.1 Either party may make any press announcements about the Services.

18.2 Notwithstanding, no party shall do anything or publicise anything to cause anything to be done, which may damage the reputation of the other or bring the other party into disrepute.

## **19 LGR CONTRACT TRANSFER CLAUSE**

19.1 This Agreement shall automatically transfer in whole or part to a Successor Body in order to give effect to any Transfer.

19.2 Following such Transfer, any references in this Agreement to the Council shall be construed as a reference to the Successor Body.

## **20 ASSIGNMENT**

20.1 Notwithstanding any permitted Transfers in Clause 19, ECC shall also be entitled to:

20.1.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement either in whole or in part

to any Contracting Authority (as defined in regulation 2(1) of the Procurement Act 2023);

20.1.2 transfer, assign or novate its rights and obligations where required by law and only to a body assuming the whole or part of the party's business

20.2 The Partner shall obtain prior written permission from ECC (such permission not to be unreasonably withheld) if it wishes to:

20.2.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement either in whole or in part to any Contracting Authority (as defined in regulation 2(1) of the Procurement Act 2023);

20.2.2 transfer, assign or novate its rights and obligations where required by law and only to a body assuming the whole or part of the party's business.

## **21 NO PARTNERSHIP OR AGENCY**

21.1 Each of the parties is an independent body and nothing contained in this Agreement shall be construed to imply that there is any relationship between the parties of partnership or principal/agent or of employer/employee. Neither party shall have any right or authority to act on behalf of another party nor bind another party by contract or otherwise except to the extent expressly permitted by the terms of this Agreement.

## **22 NO WAIVER**

22.1 No forbearance or delay by any party in enforcing its respective rights will prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

## **23 THIRD PARTY RIGHTS**

23.1 The parties agree that they do not intend that any third party which may benefit from this Agreement shall have any rights of enforcement under the terms of the Contracts (Rights of Third Parties) Act 1999.

## **24 SEVERANCE**

24.1 Each provision of this Agreement is severable and distinct from the others and the parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law.

24.2 If any provision of this Agreement is, or at any time becomes, to any extent invalid, illegal or unenforceable under any enactment or rule of law, it shall to that extent be deemed not to form part of the Agreement but (except to the extent in the case of that provision) it and all other provisions of this Agreement shall continue in full force and effect and their validity, legality and enforceability shall not be thereby affected or impaired, provided that the operation of this agreement would not negate the commercial intent and purpose of the parties under this Agreement.

24.3 If any provision of this agreement is illegal or unenforceable as a result of any time period being stated to endure for a period in excess of that permitted by a regulatory authority, that provision shall take effect within a time period that is acceptable to the relevant regulatory authorities subject to it not negating the commercial intent of the parties under this Agreement.

## **25 NOTICES**

25.1 Any notice required by this Agreement to be given by either party to the other shall be in writing and shall be served personally, by email or by sending the same by registered post or recorded delivery to the following:

25.1.1 Essex County Council:

Name: Essex County Council [Attention of ]

Address: County Hall, Market Road, Chelmsford. CM1 1QH.

Telephone number:

Email:

25.1.2 Partner:

Name:

Address:

Telephone number:

Email:

25.2 A party to this Agreement may change its nominated individual, address or phone number by prior notice to the other party.

25.3 Any notice served personally will be deemed to have been served on the day of delivery, any notice sent by email during regular business hours will be deemed to have been served on the day of delivery (or next business day if sent outside regular business hours), any notice sent by post will be deemed to have served three (3) Business Days after it was posted.

## **26 ENTIRE AGREEMENT**

26.1 This Agreement sets forth the entire Agreement between the parties and supersedes and replaces all prior communications, representations (other than fraudulent presentations), warranties, stipulations, undertakings and Agreements whether oral or written between the parties. Each party acknowledges that it does not enter into this Agreement in reliance on any warranty, representation or undertaking other than those contained in this Agreement, and that its only remedies are for breach of this deed provided that this shall not exclude any liability which any party would otherwise have to the other in respect of any statements made fraudulently by or on behalf of it prior to the date of this Agreement.

## **27 STATUTORY DUTY**

27.1 The parties acknowledge that nothing in this Agreement will prevent them from carrying out their respective statutory duties and responsibilities or restrict the decisions to be made with regard to their respective functions.

## **28 RECORDS AND ACCESS**

28.1 The parties agree that they shall keep and maintain until six years after this Agreement has been terminated, or as long a period as may be agreed between the parties, full and accurate records of the Services, all expenditure and all payments made by each party. A party shall afford on request each of the other party or their representatives such access to those records as may be required by

them in connection with this Agreement. This provision shall survive expiry or termination of this Agreement.

**29 GOVERNING LAW AND JURISDICTION**

29.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute, claim or matter that arises in connection with this Agreement or its formation (including non-contractual disputes or claims).

**EXECUTED AS A DEED** by the parties on the date set out above

The common seal of the )  
ESSEX COUNTY COUNCIL )  
was hereunto affixed in the presence of: )

.....

Authorised signatory

**EXECUTED AS A DEED** by the parties on the date set out above

The common seal of the )  
[insert Partner name] )  
was hereunto affixed in the presence of: )

.....

Authorised signatory

## **APPENDIX 1 – SITES**

The following Sites owned by the Partner are to be included:

- 1.

