DATED Click here to enter a date.

**SWALE BOROUGH COUNCIL**

**and**

**COMPANY NAME**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SERVICES AGREEMENT**

For

 **TENDER / OPPORTUNITIY NAME**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mid Kent Legal Services

Swale Borough Council

Ref: Enter Reference Number

**CONTENTS**

**Clauses**

1. Definitions and Interpretation
2. Commencement and Duration
3. Services
4. Fees and Charges
5. Payment Procedures and Approvals
6. Service Provider’s Warranties
7. Contract Management
8. Health and Safety
9. Staff and Key Personnel
10. Equipment and Materials
11. Performance and Monitoring
12. Records, Audit and Inspection
13. Set-Off
14. Indemnities
15. Insurance
16. Data Protection
17. Intellectual Property Rights
18. Confidentiality
19. Freedom of Information
20. Termination
21. Consequences of Termination and Expiry
22. Dispute Resolution
23. Business Continuity Plan
24. Sustainability
25. Equality
26. TUPE
27. Waiver
28. Severability
29. Third Party Rights
30. Successors
31. Authority’s Standing Orders
32. No Agency or Partnership
33. Anti-Bribery
34. Prevention of Fraud
35. Survival of Terms
36. Notices
37. No Fetter
38. Assignment, Sub-Contracting and Change of Ownership
39. Variation
40. Further Assurance
41. Costs
42. Entire Agreement
43. Modern Slavery
44. Prevent
45. Safeguarding
46. Whistleblowing
47. Law and Jurisdiction

**Schedules**

Schedule 1 - Key Agreement Information

Schedule 2 – Services

Schedule 3 – Standards and Performance Management Regime(s) including KPIs

Schedule 4 – Charges

Schedule 5 – Service Provider’s Tender

Schedule 6 – Change Control Procedure

Schedule 7 - Variation

**THIS AGREEMENT** is made the 00 day of Month **20XX**

**BETWEEN:**

1. **SWALE BOROUGH COUNCIL** of Swale House, East Street, Sittingbourne, Kent ME10 3HT (the “**Authority**”); and
2. COMPANY NAME a company registered in England and Wales under Reg. No. COMPANY NUMBER and whose registered office is situate at Full Postal Address (the “**Service Provider**”).

**WHEREAS:**

**(A)** The Authority sought proposals for the provision of INSERT OUTLINE OF SERVICES by means of a public tender exercise. The Authority placed a contract notice REFERENCE on DATE in the Official Journal of the European Union seeking expressions of interest from potential providers for the provision of INSERT OUTLINE OF SERVICES.

**(B)** The Authority has, through a competitive process, selected the Service Provider to provide these Services and the Service Provider is willing and able to provide the services in accordance with the terms and conditions of this Agreement.

**(C)** The Authority wishes to appoint the Service Provider to provide the Services in connection with insert Project name and brief details.

**(D)** The Service Provider has agreed to provide the Services to the Authority on the terms and conditions set out in this Agreement.

**NOW IT IS HEREBY AGREED:**

1. DEFINITIONS AND INTERPRETATION

**1.1** In the Agreement (including the Recitals) unless the context indicates otherwise the following expressions shall have the following meanings:

|  |  |
| --- | --- |
| “**Achieved KPIs**” | means, in respect of any Service in any measurement period, the standard of performance actually achieved by the Supplier in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in **Schedule 2**); |
| “**Agreement**” | means this Agreement, including the Schedules and all other documents referred to in this Agreement; |
| “**Agreement Commencement Date**” | means the date for commencement of this Agreement specified in **Schedule 1**; |
| “**Assigned Employees**” | means the employees of the Service Provider engaged in the provision of the Services (if any) at the date on which this Agreement is terminated or expires in accordance with its terms; |
| “**Authority’s Data**” | means all information and documentation provided by the Authority to the Service Provider pursuant to and in connection with this Agreement; |
| “**Change**” | means any change to this Agreement including to any of the Services; |
| “**Change Control Note**” | means the written record of a Change agreed or to be agreed by the Parties pursuant to the Change Control Procedure; |
| “**Change Control Procedure**” | the procedure for changing this Agreement set out in **Schedule 6**; |
| “**Charges**” | means the charges payable by the Authority, in consideration of the due performance of the Services, as specified or calculated in accordance with the pricing schedule; |
| “**Confidential Information**” | means all information (whether written or oral) that by its nature may reasonably be regarded as confidential by the Authority (whether commercial, financial, technical or otherwise) including information which relates to the business affairs, customers, suppliers, products, and/or software, telecommunications, networks, trade secrets, know-how or personnel of the Authority; |
| “**Contract Information**” | 1. this Agreement in its entirety (including from time to time agreed changes to the Agreement); and
2. data extracted from the invoices submitted pursuant to Clause 5 (Payment Procedures and Approvals) which shall consist of the Service Provider’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;
 |
| “**Contract Manager**” | means the Authority’s Contract Manager identified in **Schedule 1**; |
| “**Data Controller**” | shall have the meaning as set out in the Data Protection Act 2018; |
| “**Data Processor**” | shall have the meaning as set out in the Data Protection Act 2018; |
| “**Data Protection Legislation**” | means the Data Protection Act 2018 and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner; |
| “**Data Subject**” | shall have the meaning as set out in the Data Protection Act 2018 ; |
| “**Data Subject Access Request**” | a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data; |
| “**FOI Legislation**” | means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; 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 Event**” | means any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event (“**Affected Party**”) to perform its obligations in accordance with the terms of this Agreement but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact; |
| “**Information**” | means information recorded in any form held by the Authority or by the Service Provider on behalf of the Authority; |
| “**Information Request**” | means a request for any Information under the FOI Legislation; |
| “**Insolvency Event**” | means any of the following:(a) the Service Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts **OR** (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;(b) the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of that other party;(c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Service Provider (being a company);(e) the holder of a qualifying floating charge over the assets of the Service Provider (being a company) has become entitled to appoint or has appointed an administrative receiver; (i) a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;(f) the Service Provider (being an individual) is the subject of a bankruptcy petition or order;(g) a creditor or encumbrancer of the Service Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;(h) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive);(i) the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or(j) the Service Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; |
| “**Intellectual Property Rights**” | means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites; |
| “**Key Personnel**”  | means the Service Provider’s key personnel named as such in **Schedule 1**; |
| “**Losses**” | means all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments; |
| “**Milestone**” | means an event which is the completion of one or more of the specified activities as may be set out in the Project Plan in the specification; |
| “**Parties**” | means the Authority and the Service Provider (including their successors and permitted assignees) and “**Party**” shall mean either of them as the case may be; |
| “**Personal Data**” | shall have the meaning as set out in the Data Protection Act 2018 ; |
| “**Process**” | has the meaning given to it under the Data Protection Legislation but, for the purposes of this Agreement, it shall include both manual and automatic processing; |
| “**Prohibited Act**” | means the offering or giving to any person, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done, any act in relation to the obtaining or execution of this Agreement except in the respect of payments made to the Service Provider in the normal course of this Agreement; or showing or forbearing to show, favour or disfavour to any person in relation to this or any other contract with the Authority; or in relation this Agreement; or committing any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010 or any related legislation or any of the money laundering related offences listed in the Public Agreement Regulations 2006 or giving any fee or reward, the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972; |
| “**Project Plan**” | means the plan (if any) in the specification in relation to the performance and timing of the Services which may include Milestones; |
| “**Remediation Notice**” | means a notice served by the Authority in accordance with Clause 20.1.1; |
| “**Services**” | means: (a) all or any part of the services to be provided to, or activities to be undertaken and completed for, the Authority by the Service Provider in the specification including any variations to such services and/or activities pursuant to Clause 39 (Variation); and(b) any responsibilities, services, or functions which may be reasonably regarded as incidental to the Services or activities and which may be reasonably inferred; |
| “**Service Provider’s Personnel**” | means all employees, staff, other workers, agents and consultants of the Service Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time, and including the Key Personnel; |
| “**Service Provider’s Representative**” | means the Service Provider’s Representative identified in **Schedule 1**; |
| “**Service Provider’s Tender**” | the tender submitted by the Supplier and other associated documentation set out in **Schedule 5**; |
| “**Specification**” | means the Specification (if any) and other requirements set out in the specification; |
| “**Sub-Contract**” | any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof; |
| “**Sub-Contractor**” | the third parties that enter into a Sub-Contract with the Service Provider; |
| “**Target KPI**” | means the minimum level of performance for a KPI which is required by the Authority as set out against the relevant KPI in **Schedule 3**; |
| “**Term**” | means the period during which this Agreement continues in force as set out in **Schedule 1**; |
| “**Transferring Employee**” | means the employees of the Authority providing the Services or equivalent to the Services immediately before the Commencement Date of this Agreement who were engaged wholly or mainly in connection with the provision of Services; |
| “**TUPE**” | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended; |
| “**VAT**”**“VAT Invoice”** | means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature;means the Service Provider’s invoice, displaying the Service Provider’s VAT registration number and detailing the applicable VAT element(s) to be added to the agreed charges for the goods and service delivered under this Agreement |
| “**Working Day**” | means any day excluding Saturdays, Sundays or public or bank holidays in England. |

**1.2** a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;

**1.3** a reference 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 or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to its whether replaced before or after the date of this Agreement;

**1.4** a reference to any document other than as specified in Clause 1.3 and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of this Agreement;

**1.5** headings are included in the Agreement for ease of reference only and do not affect the interpretation or construction of the Agreement;

**1.6** the Schedules form part of the Agreement and will have the same force and effect as if expressly set out in the body of the Agreement;

**1.7** references to Clauses and Schedules are, unless otherwise provided, references to Clauses of, and Schedules to, the Agreement and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;

**1.8** in the event, and only to the extent, of any conflict between the Clauses and the Schedules, the Clauses prevail, except where the conflicting part of the Schedule is explicitly expressed to take precedence or to be of equal importance to the applicable Clause(s);

**1.9** the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;

**1.10** a reference to a “company” shall include any company, corporation or other body corporate, wherever and however incorporated or established;

**1.11** the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context;

**1.12** 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;

**1.13** 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;

**1.14** A reference to writing or written includes faxes but not OR and e-mail;

**1.15** except as otherwise expressly provided in this Agreement, and subject to Clause 1.7, if there is any inconsistency between any of these Clauses or the Schedules, or any other document referred to in or incorporated into this Agreement the order of priority for the purposes of construction is:

1.15.1 the Clauses;

1.15.2 the Schedules;

1.15.3 any other document referred to in or incorporated by reference into this Agreement.

**2. COMMENCEMENT AND DURATION**

This Agreement commences on the Agreement Commencement Date and continues in force for the Term unless terminated earlier, either in whole or in part, in accordance with this Agreement.

**3. SERVICES**

**3.1** The Service Provider acknowledges that it has sufficient information about the Authority, the Services and the Specification (if any) and that it has made all appropriate and necessary enquiries to enable it to perform the Services.

**3.2** The Service Provider shall provide the Services:

3.2.1 with the high degree of skill, care and diligence normally exercised by recognised professional firms or by highly skilled and experienced Service Providers providing services of a similar scope, type and complexity as the Services in this Agreement and with sufficient resources including project management resources;

3.2.2 in compliance in all respects with the Specification and so that the Services fulfil the purpose indicated by or to be reasonably inferred from the Specification; and

3.2.3 in a safe manner and free from any unreasonable or avoidable risk to any person’s health and well-being and in an economic and efficient manner.

**3.3** The Service Provider shall comply with all lawful and reasonable directions of the Authority relating to its performance of the Services.

**4. CHARGES**

**4.1** The Service Provider shall invoice the Authority in accordance with the procedures set out in Clause 5 and in consideration of, and subject to the due performance of the Services by the Service Provider, the Authority shall pay the Service Provider the Charges in accordance with those procedures.

**4.2** The Service Provider is not entitled to reimbursement for expenses unless such expenses are specified in the pricing schedule or have been incurred with the prior written consent of the Authority, in which case the Service Provider shall supply appropriate evidence of expenditure in a form acceptable to the Authority.

**4.3** [Save where the context so requires or as otherwise stated herein all costs charges or payments required to be made under or pursuant to this Agreement are exclusive of VAT and insofar as such costs, charges or payments are made or to be made in respect of the supply of goods or services which are subject to the addition of Value Added Tax then the applicable amount of such Value Added Tax shall be added to such costs, charges or payments and shall become payable against the provision of a valid VAT Invoice.][[1]](#footnote-1)

**4.4** The Service Provider shall submit a valid VAT Invoice for goods and services delivered pursuant to the Authority’s requirements under this contract. The valid VAT Invoice shall be payable in accordance with the provision of this Agreement.

**5. PAYMENT PROCEDURES AND APPROVALS**

**5.1** The Service Provider shall invoice the Authority in respect of the Charges monthly in arrears during or at such dates or at the end of such other periods as may be specified the pricing schedule.

**5.2** It is a condition precedent of the submission of an invoice on completion of a milestone that all preceding milestones specified in the specification have been completed.

**5.3** The Service Provider shall submit invoices to the address set out in **Schedule 1**, each such invoice shall contain all information required by the Authority including the Authority’s Account Details, the Service Provider’s name and registered address, VAT registration number, a separate calculation of VAT and a brief description of the Services provided. Invoices shall be clear, concise, accurate, and adequately descriptive to avoid delays in processing subsequent payment.

**5.4** The Service Provider shall ensure that all Sub-Contracts contain a provision:

5.4.1 requiring the Service Provider to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice; and

5.4.2 a right for the Authority to publish the Service Provider's compliance with its obligation to pay undisputed invoices within the specified payment period.

**5.5** The Service Provider shall:

5.5.1 pay any undisputed sums which are due from it to a Sub-Contractor within 30 days from the receipt of a valid invoice;

5.5.2 include within the management report produced by it a summary of its compliance with Clause 5.4.1, such data to be certified each quarter by a director of the Service Provider as being accurate and not misleading.

**5.6** Notwithstanding any provision of Clauses 18 (Confidentiality), if the Service Provider notifies the Authority (whether in a management report or otherwise) that the Service Provider has failed to pay an Sub-Contractor's undisputed invoice within 30 days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

**5.7** In the event of a variation to the Services in accordance with this Agreement that involves the payment of additional fees or charges to the Service Provider, the Service Provider shall identify these separately on the relevant invoice.

**5.8** If the Authority considers that the Charges claimed by the Service Provider in any invoice have:

5.8.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System (“**BACS**”)) or such other method as the Authority may choose from time to time within 30 days of receipt of such invoice or such other time period as may be specified in the pricing schedule; or

5.8.2 not been calculated correctly and/or if the invoice contains any other error or inadequacy, the Authority shall notify the Service Provider and the Parties shall work together to resolve the error or inadequacy. Upon resolution, the Service Provider shall submit a revised invoice to the Authority.

**5.9** No payment made by the Authority (including any final payment) or act or omission or approval by the Authority or its Contract Manager (whether related to payment or otherwise) shall:

5.9.1 indicate or be taken to indicate the Authority’s acceptance or approval of the Services or any part of them or any act or omission of the Service Provider, or otherwise prejudice any rights, powers or remedies which the Authority may have against the Service Provider or absolve the Service Provider from any obligation or liability imposed on the Service Provider; or

5.9.2 prevent the Authority from recovering any amount overpaid or wrongfully paid including payments made to the Service Provider by mistake of law or fact. The Authority shall be entitled to withhold such amount from any sums due or which may become due to the Service Provider or the Authority may recover such amount as a debt due under this Agreement.

6. Service Provider’s warranties

**6.1** The Service Provider warrants and represents that:

6.1.1 as at the Commencement Date, warrants and represents that all information contained in the Service Provider's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Agreement;

6.1.2 shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs;

6.1.3 it has the full capacity and has taken all steps and obtained all approvals, consents and licences required to enable it to lawfully enter into and perform each of its obligations under this Agreement;

6.1.4 this Agreement shall be executed by its duly authorised representatives;

6.1.5 the information supplied by the Service Provider in the Tender is true and accurate in all material respects;

6.1.6 there are no material facts or circumstances in relation to the financial position or operational constitution of the Service Provider which have not been fully and fairly disclosed to the Authority and which, if disclosed, might reasonably have been expected to affect the decision of the Authority to enter into this Agreement; and

6.1.7 it has not committed any Prohibited Act.

**7. CONTRACT MANAGEMENT**

**7.1** The Authority authorises its Contract Manager to act as its Authorised Representative for all purposes in connection with this Agreement and the Service Provider shall deal with the Contract Manager (or his or her Nominated Representative) in respect of all matters arising under this Agreement.

**7.2** The Service Provider shall appoint a Service Provider’s Representative who shall be duly authorised for all purposes in connection with this Agreement and the Service Provider shall provide the Key Personnel. The Service Provider’s Representative and the Key Personnel shall:

7.2.1 diligently supervise the performance of the Services;

7.2.2 attend all contract meetings with the Authority the location, frequency and time of which may be specified by the Contract Manager; and

7.2.3 be available to the Authority to resolve any issues arising in connection with this Agreement at such time periods as may be specified by the Contract Manager.

**7.3** The Service Provider may only make any changes to the Service Provider’s Representative or Key Personnel (except in the event of sickness, incapacity or resignation) with the prior consent of the Authority which shall not be unreasonably withheld.

**7.4** No act of or omission by or approval from the Authority or its Contract Manager in performing any of their respective duties under or in connection with this Agreement shall in any way operate to relieve the Service Provider of any its duties, responsibilities, obligations or liabilities under this Agreement.

**8.** **HEALTH AND SAFETY**

**8.1** The Service Provider shall have regard to the Authority’s Health and Safety policies and safe working practices when preparing its own statements copies of which are available to download on request to the Authority.

**8.2** Whilst on the Authority’s owned premises the Service Provider shall require its employees, agents and/or sub-Service Providers to comply with the reasonable directions and requirements of the Authority’s safety advisers.

**8.3** The Service Provider shall nominate a senior manager to be responsible for ensuring that all Health and Safety matters arising from the provision of the Services under this Agreement are dealt with in accordance with the Service Provider’s approved Health and Safety Policy and the Health and Safety at Work Act 1974.

**8.4** The Service Provider shall conduct the Services so as to eliminate or minimise so far as is reasonably practicable any health and safety risks to members of the public, the Authority’s employees and the Contractor’s employees and other staff carrying out the Services.

**8.5** The Service Provider shall direct its employees, agents and sub-contractors to comply with the Health and Safety Policy and shall conduct regular reviews and audits of that policy to ensure that the provision of the Services is made in accordance with it. In the event that there are revisions of the Health and Safety Policy these must be notified to the Authority in writing 10 Working Days prior to the proposed alteration to the Health and Safety Policy coming into effect and the Authority shall be entitled to challenge such alteration to the Health and Safety Policy if in its discretion it considers that a change in any way dilutes the minimum standard set out in the Health and Safety Policy.

**9.** **STAFF AND KEY PERSONNEL**

**9.1** **Service Provider’s Staff**

9.1.1 The Service Provider shall at all times during the Term ensure that its employees engaged in the provision of the Services have sufficient skill and ability and have been properly trained in order to carry out the Services in accordance with this Agreement;

9.1.2 The Service Provider shall at all times be fully responsible for the payment of full income or other taxes national insurance contributions or levies of any kind relating to or arising out of the employment of any person engaged by the Service Provider in the performance of the Services and shall indemnify the Authority in respect of any liabilities which may arise to the Authority as a result of the failure by the Service Provider to comply with the obligation in this Clause 9.1.2; and

9.1.3 The Authority shall be entitled to notify and require the Service Provider to discipline or remove from the performance of the Services any employee of the Service Provider engaged in the provision of the Services. The Authority shall not be liable to either the Service Provider or to such an employee for any claims arising from any disciplinary action or removal as a result of the Authority’s notice to the Service Provider and the Service Provider shall indemnify the Authority against any such claims.

**10.** **EQUIPMENT AND MATERIALS**

**10.1** Regardless of whether or not the Service Provider’s equipment and materials are located at the Authority’s Premises, risk in all Service Provider’s Equipment and Materials (including any of its sub-contractors) shall be with the Service Provider at all times and all other equipment and materials forming part of the Services (title to which will pass to the Authority) shall be with the Service Provider until payment of the Services in accordance with this Agreement.

**10.2** The Service Provider shall ensure that all its equipment and materials meet all minimum safety standards required from time to time by law.

**11. PERFORMANCE AND MONITORING**

**11.1** **Performance Standards**

The Service Provider shall throughout the Term perform the Services so as to meet the minimum performance standards set out for the Services in the specification.

**11.2** **Review and Monitoring of Performance**

 The performance of the Services shall be subject to monitoring by the Authority and through the performance management and monitoring procedure which may set out in the specification; or otherwise agreed between the Contract Manager and the Service Provider’s Representative.

**11.3 KPIs**

 Where any Service is stated in Schedule 2 to be subject to a specific KPI, the Service Provider shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than such specific Target KPI.

 As existing Services are varied and new Services are added, Target KPIs for the same will be determined and included within Schedule 2.

 The Service Provider shall provide records of and Management Reports summarising the Achieved KPIs as provided for in Clause 11.2.

**12. RECORDS, AUDIT AND INSPECTION**

**12.1** The Service Provider shall and shall procure that its sub-contractors shall:

12.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Service Provider’s obligations under this Agreement and all transactions entered into by the Service Provider for the purposes of this Agreement including time-sheets for the Service Provider’s Personnel where such records are material to the calculation of the Charges (“**Records**”);

12.1.2 retain all Records during the Term and for a period of not less than six (6) twelve (12) years (or such longer period as may be required by law) following termination or expiry of this Agreement (“**Retention Period**”).

**12.2** The Authority and any person nominated by the Authority has the right to audit any and all Records at any time during the Retention Period on giving to the Service Provider what the Authority considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Service Provider’s performance of the Services and the Service Provider shall give all reasonable assistance to the Authority or its nominees in conducting such inspection, including making available documents and staff for interview.

**13. SET-OFF**

The Authority shall be entitled at any time to set off any liability of the Service Provider to the Authority against any liability of the Authority to the Service Provider.

**14.** **INDEMNITIES**

**14.1** Subject to Clause 14.2, the Service Provider is responsible for and shall indemnify, keep indemnified and hold harmless the Authority (including its employees, sub-contractors and agents) (“**the Indemnified Party**”) against all Losses which the Indemnified Party incurs or suffers as a consequence of any direct or indirect breach or any negligent performance of this Agreement by the Service Provider (or any of its employees, agents or sub-Service Providers) including in each case any non-performance or delay in performance of this Agreement or of any breach of statutory duty, misrepresentation or misstatement by the Service Provider or any of its employees or sub-Service Providers.

**14.2** The Service Provider is not responsible for and shall not indemnify the Authority for any Losses to the extent that such Losses are caused by any breach or negligent performance of any of its obligations under this Agreement by the Authority and/or any of its employees or agents.

**14.3** Notwithstanding any other provision of this Agreement, neither Party limits or excludes its liability for fraud or fraudulent misrepresentation or for death or personal injury caused by its negligence.

**15.** **INSURANCE**

**15.1** The Service Provider shall at all times have in force with reputable insurers or underwriters, approved by the Authority, the following insurances for the period of the Term of this Agreement:

15.1.1 Public liability insurance with a limit of indemnity of not less than **£5** **million** in relation to any one claim or series of claims;

15.1.2 Employers liability insurance with a limit of indemnity of not less than **£10 million** in relation to any one claim or series of claims;

15.1.3 Professional indemnity insurance with a limit of indemnity of not less than **£2 million** in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover or, where professional indemnity insurance is not available

15.1.4 product liability insurance with a limit of indemnity of not less than £INSERT AMOUNT in relation to any one claim or series of claims. All other insurances required by law.

**15.2** The Service Provider shall notify the Contract Manager as soon as reasonably practicable upon the notification of any event which may give rise to a claim of more than ten thousand pounds (£10,000) sterling.

**15.3** The Service Provider shall, prior to the Commencement Date of this Agreement and thereafter annually, on the anniversary of the Commencement Date and at any other reasonable times as the Contract Manager may require supply the Contract Manager with evidence of all of the insurance policies referred to in clause 15.1 including copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the required insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

**15.4** In the event that in the opinion of the Contract Manager any policies of insurance referred to in Clause 15.1 do not effect sufficient cover to comply with this Agreement then the Contract Manager shall be entitled to notify the Service Provider of the Authority’s requirement for the Service Provider to effect any such insurances as will ensure that the Service Provider complies with its obligation in terms of Clause 15.1. Upon receipt of such notice the Service Provider shall immediately procure and affect such insurance as notified by the Contract Manager.

**15.5** In the event that the Service Provider does not affect such insurance theAuthority may take out such insurance on behalf of the Authority in which case the Service Provider shall pay on demand the cost to the Authority of taking out such insurance.

**15.6** The Service Provider shall hold and maintain the required insurances for a minimum of six 12 years following the expiration or earlier termination of this Agreement.

**16. DATA PROTECTION**

* 1. **16.1** With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Authority is a Data Controller and that the Service Provider is a Data Processor OR, where relevant, that the Authority and the Service Provider are joint Data Controllers.

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**16.2** The Service Provider shall:

16.2.1 Process the Personal Data only in accordance with instructions from the Authority to perform its obligations under this Agreement;

16.2.2 ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data;

16.2.3 not disclose or transfer the Personal Data to any third party or Service Provider Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Agreement);

16.2.4 take all reasonable steps to ensure the reliability and integrity of any Service Provider Personnel who have access to the Personal Data and ensure that the Service Provider Personnel:

16.2.4.1 are aware of and comply with the Service Provider's duties under this Clause 16 and Clause 18 (Confidentiality);

16.2.4.2 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement; and

16.2.4.3 have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);

16.2.5 notify the Authority within 5 Working Days if it receives:

16.2.5.1 from a Data Subject (or third party on their behalf):

(a) a Data Subject Access Request (or purported Data Subject Access Request);

(b) a request to rectify, block or erase any Personal Data; or

(c) any other request, complaint or communication relating to the Authority's obligations under the DPA;

16.2.5.2 any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or

16.2.5.3 a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

16.2.6 provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made as referred to in Clause 16.2.5, including by promptly providing:

16.2.6.1 the Authority with full details and copies of the complaint, communication or request;

16.2.6.2 where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and

16.2.6.3 the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and

16.2.7 if requested by the Authority, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

**16.3** The Service Provider shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together "**Restricted Countries**"). If, after the Effective Date, the Service Provider or any Sub-contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Countries, the following provisions shall apply:

16.3.1 the Service Provider shall submit a Change Request to the Authority which, if the Authority agrees to such Change Request, shall be dealt with in accordance with the Change Control Procedure and Clauses 16.3.3 to 16.3.4;

16.3.2 the Service Provider shall set out in its Change Request and/or Impact Assessment details of the following:

16.3.2.1 the Personal Data which will be transferred to and/or Processed in any Restricted Countries;

16.3.2.2 the Restricted Countries which the Personal Data will be transferred to and/or Processed in; and

16.3.2.3 any Sub-contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;

16.3.2.4 how the Service Provider will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with the DPA;

16.3.3 in providing and evaluating the Change Request and Impact Assessment, the Parties shall ensure that they have regard to and comply with then-current Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and

16.3.4 the Service Provider shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:

16.3.4.1 incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Agreement or a separate data processing agreement between the Parties; and

16.3.4.2 procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:

(a) a direct data processing agreement with the Authority on such terms as may be required by the Authority; or

(b) a data processing agreement with the Service Provider on terms which are equivalent to those agreed between the Authority and the Sub-Contractor relating to the relevant Personal Data transfer,

and in each case which the Service Provider acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Authority deems necessary for the purpose of protecting Personal Data.

**16.4** The Service Provider shall use its reasonable endeavours to assist the Authority to comply with any obligations under the DPA and shall not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of the Authority's obligations under the DPA to the extent the Service Provider is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

**17. INTELLECTUAL PROPERTY RIGHTS**

17.1 Save as the Parties may otherwise agree (in writing), the Service Provider hereby assigns with full title guarantee to the Authority all Intellectual Property Rights in all documents, drawings, computer software and any other work or data prepared or developed by and on behalf of the Service Provider in the provision of the Services (“the Products”) provided that such assignment shall not include items not prepared or developed specifically for the purposes of providing the Services.

**17.2** The Service Provider shall provide the Authority with copies of all materials relied upon or referred to in the creation of the Products with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such materials in connection with the use of the Products.

**18. CONFIDENTIALITY**

**18.1** Subject to Clauses 16 and 18.6, the Service Provider shall keep confidential:

18.1.1 the terms of this Agreement and any agreed variation thereto; and

18.1.2 all Confidential Information that it may acquire in relation to the Authority.

**18.2** The Service Provider will not use the Authority’s Confidential Information for any purpose other than to perform its obligations under this Agreement. The Service Provider will ensure that its officers, employees and sub-contractors will comply with the provisions of Clause 18.1.

**18.3** The obligations of the Service Provider set out in Clause 18.1 shall not apply to any Confidential Information which:

18.3.1 either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 18); or

18.3.1 a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure.

**18.4** The Service Provider shall keep secure all data and materials containing any information in relation to the Agreement and its performance.

**18.5** The Service Provider shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of the Agreement or that it is providing the Services to the Authority or in relation to any matter under or arising from the Agreement unless granted consent in writing by the Authority. The Authority shall have the right to approve any public announcement before it is made.

**18.6** The Authority may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing, and in its absolute discretion, the Authority may take account of the exemptions that would be available in relation to information requested under the FOI Legislation. The Authority may, in its absolute discretion, consult with the Service Provider regarding any redactions to the Contract Information to be published pursuant to this Clause 18.6. The Authority shall make the final decision regarding publication and/or redaction of the Contract Information.

**19. FREEDOM OF INFORMATION**

**19.1** The Service Provider acknowledges that the Authority:

19.1.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Authority to enable the Authority to comply with its obligations under the FOI Legislation; and

19.1.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.

**19.2** Without prejudice to the generality of Clause 19.1, the Service Provider shall and shall procure that its sub-contractors (if any) shall:

19.2.1 transfer to the Contract Manager (or such other person as may be notified by the Authority to the Service Provider) each Information Request relevant to this Agreement or the Services that it or they (as the case may be) receive as soon as practicable and in any event within 2 Working Days of receiving such Information Request; and

19.2.2 in relation to Information held by the Service Provider on behalf of the Authority, provide the Authority with details about and/or copies of all such Information that the Authority requests and such details and/or copies shall be provided within 5 Working Days of a request from the Authority or such other period and in such forms as the Authority may reasonably specify.

**19.3** The Authority shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Service Provider shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Authority.

**20.** **TERMINATION**

**20.1** Without prejudice to the Authority’s right to terminate at common law, the Authority may terminate this Agreement immediately upon giving notice to the Service Provider, if the Service Provider:

20.1.1 has committed any material or persistent breach of this Agreement and, in the case of such a breach that is capable of remedy fails to remedy that breach within 10 Working Days (or such other period as specified in writing by the Authority) from the date of written notice (a “**Remediation Notice**”) to the Service Provider giving details of the breach and requiring it to be remedied; or

20.1.2 is subject to an Insolvency Event; or

20.1.3 commits a breach of Clause 6 (Service Provider’s Warranties); or

20.1.4 commits a breach of Clause 18 (Confidentiality); or

## 20.1.5 commits a Prohibited Act; or

20.1.6 commits a breach of Clause 38 (Assignment, Sub-Contracting and Change of Ownership); or

20.1.7 if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

**20.2** **Force Majeure**

20.2.1 Neither Party shall be in breach of any obligation under this Agreement if it is unable to perform that obligation in whole or in part by reason of a Force Majeure Event.

20.2.2 If either Party seeks to rely on this Clause it shall immediately give notice to the other with full particulars of the act or matter claimed as a Force Majeure Event. The Party so affected shall take all reasonable steps to remedy the failure to perform and to keep the other Party informed of the steps being taken to mitigate the effects of the Force Majeure Event.

20.2.3Without prejudice to any accrued rights or remedies, if a Force Majeure Event lasts for more than 30 Working Days either Party may, following consultation with the other Party, give notice of termination of this Agreement.

**20.3 Replacement Service Provider**

20.3.1 In the event that the Authority terminates this Agreement and any in accordance with Clause 20.1, then the Service Provider shall indemnify the Authority in respect of procuring the performance of the Services by a Replacement Service Provider in accordance with Clause 20.3.2.

20.3.2 On termination of this Agreement under clause 20.1, the Authority may enter into any agreement with any third party or parties to provide any or all of the Services and the Service Provider shall be liable for all additional expenditure (“**Costs**”) reasonably incurred by the Authority in having such services carried out including, but not limited to, direct loss and expense, legal and other costs and damages incurred in consequence of such termination. The Authority may deduct such Costs from the Fees and Charges or otherwise recover such Costs from the Service Provider as a debt due.

**20.4** **Termination on Notice**

20.4.1 Without affecting any other right or remedy available to it, the Authority may terminate this Agreement at any time by giving NUMBER months' written notice to the Service Provider.

**21. CONSEQUENCES OF TERMINATION AND EXPIRY**

**21.1** Upon termination, the Service Provider shall continue to provide the Services in accordance with the terms of this Agreement and will ensure that there is no degradation in the standards of the Services until the expiry of the termination period and, for a reasonable time thereafter, shall answer such questions from the Authority’s Contract Manager as may be relevant to the transfer of the Services to a Replacement Service Provider.

**21.2** Notwithstanding the provisions of Clause 18 (Confidentiality) whenever the Authority chooses to put out to tender for a Replacement Service Provider some or all of the Services, the Service Provider shall disclose to tenderers such information concerning the Services as the Authority may require for the purposes of such tender. The Service Provider may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.

**21.3** The termination or expiry of this Agreement shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to the Parties prior to or after such termination or expiry.

**21.4** Upon termination (howsoever caused) or expiry of this Agreement:

21.4.1 the Service Provider shall at the request of the Authority immediately return to the Contract Manager all information (including but not limited to data (including personal data), data bases, lists, correspondence, documents, specifications) and property) belonging to the Authority which may be in its possession, custody or control as acquired or developed in connection with the performance of the Services; and

21.4.2 the Authority shall (subject to its accrued rights of set off and deduction) pay the Service Provider any Fees or Charges remaining due in relation to any Services properly performed in accordance with this Agreement up to the date of termination or expiry calculated so far as is possible in accordance with Clause 5 or as otherwise reasonably determined by the Authority.

22. DISPUTE RESOLUTION

**22.1** The Authority and the Service Provider shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference (“**Dispute**”) that may arise out of or relate to this Agreement before issuing proceedings in the High Court.

**22.2** If the Dispute is not settled through discussion between the Contract Manager and a representative of the Service Provider within a period of 10 Working Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) (“**Senior Personnel**”) of each of the Parties for resolution.

**22.3** If the Dispute is not resolved within 20 Working Days of referral to the Senior Personnel, either Party may apply to the Centre for Effective Dispute Resolution (“**CEDR**”) in London to appoint a Mediator. The costs of the Mediator shall be borne equally by the Parties.

**22.4** Where a Dispute is referred to mediation under Clause 22.3, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedure as the Mediator may recommend.

**22.5** If the Parties reach agreement in mediation, such agreement shall be recorded in writing and once signed by the Parties’ authorised representatives, shall be final and binding on the Parties.

**22.6** If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Working Days of the service of the Mediation Notice either Party may commence proceedings in the High Court.

**22.7** Unless otherwise instructed by the Authority, the Service Provider shall continue to provide the Services in accordance with this Agreement without delay or disruption while the Dispute is being resolved pursuant to this Clause 22.

**22.8** Neither Party shall be prevented from seeking any order for specific performance or injunctive relief as a result of the provisions of this Clause 22 which shall not apply to any dispute where these or any other equitable remedies are sought.

**23. BUSINESS CONTINUITY PLAN**

**23.1** The Service Provider shall have in place by the Commencement Date of this Agreement a Business Continuity Plan (“**BCP**”) a copy of which shall be provided to the Contract Manager. The BCP shall be current and up to date and prepared to ISO 22301 or at least to an equivalent standard.

**23.2** The BCP shall be maintained and regularly tested by the Service Provider throughout the Term of this Agreement. The results of such testing shall be forwarded to the Contract Manager within 5 Working Days of the test being completed. The Contract Manager shall then have the right within 20 Working Days, by written statement, to require reasonable alterations to the BCP to be made by the Service Provider at its expense should such alterations be judged by the Contract Manager as needed for sustaining the proper performance of the Services.

**24. SUSTAINABILITY**

The Service Provider shall make arrangements to secure continuous improvement in the way in which the Services are provided having regard to a combination of economy, efficiency and effectiveness and shall assist the Authority in discharging its Best Value Duty in relation to the Services and either Party may propose alternative methods for the improvement of the economy, efficiency and environmental aspects of the Services or the introduction of or change in any information technology in use to support the provision of the Services and the Parties will co-operate to evaluate and, if appropriate, introduce such proposals as a variation of this Agreement.

**25. EQUALITY**

**25.1** The Service Provider is required to have in place an equal opportunities (“**Equalities**”) policy at the Commencement Date of this Agreement and throughout the Term and shall comply with the Equalities Act 2010 and any related and successor Legislation.

**25.2** The Service Provider shall take all reasonable steps to secure that all of its employees do not unlawfully discriminate and comply with the Service Provider’s obligations under Clause 25.1.

**25.3** In the performance of the Services and in its dealings with service users, the Authority’s employees and members of the general public the Service Provider shall comply and shall ensure that its employees comply with:

25.3.1 the Human Rights Act 1998 as if the Service Provider was a public body (as defined in the Human Rights Act 1998);

25.3.2 all law relating to equal opportunities including without limitation relating to disability, discrimination, sex discrimination, and race relations; and

25.3.3 the Authority’s Equalities policies and procedures as may be adopted and amended from time to time and as notified to the Service Provider.

**26. TUPE**

**26.1** The Parties agree that the contract of employment of each Transferring Employee (except for the terms and conditions of such contracts which do not transfer pursuant to TUPE Regulations) will have effect from the Commencement Date of this Agreement as if originally made between the Transferring Employee and the Service Provider or as appropriate the sub-contractor of the Service Provider except where any of the Transferring Employees object pursuant to Regulation 5(4A) of the TUPE Regulations.

**26.2** The Service Provider shall indemnify and keep indemnified the Authority against any ordinary claims by a Transferring Employee made against the Authority arising out of any proposal by the Service Provider to make a significant change (other than in respect of those changes the Service Provider is obliged to make in accordance with the Authority’s instructions) to the working conditions of any Transferring Employee to his detriment or as a result of the Service Provider’s identity as the Transferring Employees’ new employer amounting to a significant change and to his detriment in contravention of Regulation 5(5) of the TUPE Regulations.

**26.3** The Authority shall indemnify and keep indemnified the Service Provider against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses incurred by the Service Provider arising out of or in connection with any act, omission, negligence, breach of contract or any statutory legislation by the Authority or any previous Service Provider with respect to a Transferring Employee and shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of Transferring Employees, including without limitation all wages, holiday pay, payments of PAYE, national insurance contributions, pension contributions and otherwise arising prior to the Commencement Date of this Agreement.

**26.4** The Service Provider shall comply with its obligations under the TUPE Regulations at all times during the Term.

**26.5** During the period of twelve months preceding the end of the Term or immediately following either Party giving a notice Terminating this Agreement in accordance with its provisions (“**Notice of Termination**”) the Service Provider shall as soon as reasonably practicable, at the request of the Authority fully and accurately disclose to the Authority all information in respect of the Assigned Employees which the Authority and/or a Replacement Service provider may reasonably require and permit the Authority to use the information supplied (subject to the Authority complying with its obligations under the FOIA, Data Protection Act 2018 and appropriate obligations of confidentiality) to inform any prospective tenderer and/or Replacement Service Provider about the Assigned Employees.

**26.6** If during the period between supplying such information and the date on which the Assigned Employees are due to transfer to the Authority or a Replacement Service Provider there is any material change in the information supplied or new information is discovered, the Service Provider shall as soon as reasonably practicable disclose to the Authority the updated information.

**26.7** During the twelve (12) month period immediately prior to the Expiry of the Term and/or following the service of a Notice of Termination the Service Provider shall not without the written consent of the Authority (such consent not to be unreasonably withheld or delayed) alter any of the terms and conditions of employment (including the rate of remuneration, hours to be worked and holidays) of any Assigned Employees (save where the Service Provider is obliged pursuant to any collective agreement or statutory legislation to make changes).

**26.8** The Service Provider shall use all reasonable endeavours to co-operate with any other reasonable requests made by the Authority concerning any TUPE information. If the Service Provider fails to provide the TUPE information requested in this Clause 26 then the Authority may, without prejudice to any other rights it may have under this Agreement or at common law, apply to the court for an order for specific performance or such other remedy as may be appropriate and the Service Provider shall indemnify the Authority for its direct loss and all its reasonable costs and expenses of and in connection with taking such action without reference to the procedure at Clause 22 (Dispute Resolution).

**26.9** The Authority and the Service Provider agree that:

26.9.1 the Authority shall not following the Commencement Date of this Agreement assign any new employees to the Services so that they become liable to transfer to the Service Provider pursuant to the TUPE Regulations;

26.9.2 the Authority shall not alter the terms and conditions of employment of any Transferring Employees; and

26.9.3 on the Termination or Expiry of this Agreement the TUPE Regulations (or any successor legislation) shall apply to the Assigned Employees.

**27.** **WAIVER**

**27.1** No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 36 (Notices). The single or partial exercise of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

**27.2** The rights of each Party under this Agreement may be exercised as often as that Party considers appropriate, are cumulative and apply in addition to their rights under the general law and may be waived only in writing and specifically. Not exercising or delay in exercising any right is not a waiver of that right.

**28.** **SEVERABILITY**

**28.1** If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the proper law of this Agreement that shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement and the other terms and provisions of this Agreement shall remain valid and enforceable so long as the legal substance of the transactions contemplated thereby is not affected in any manner adverse to any Party.

**28.2** Upon the determination by a court of competent jurisdiction that any provision is invalid, illegal or unenforceable the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated thereby are fulfilled to the fullest extent possible.

**29.** **THIRD PARTY RIGHTS**

 No third party or other person who is not a Party to this Agreement may enforce any of its terms under the Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 which is hereby expressly excluded.

**30. SUCCESSORS**

 The provisions of this Agreement shall be binding on any successors of the Parties.

**31. AUTHORITY’S STANDING ORDERS**

The Service Provider shall comply with all the requirements of the Authority’s standing orders for the time being enforced which are available for inspection during normal working hours by prior appointment with the Contract Manager at the Authority’s normal address.

**32. NO AGENCY OR PARTNERSHIP**

Nothing in this Agreement constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in this Agreement, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

**33. ANTI-BRIBERY**

**33.1** The Service Provider shall not offer or give, or agree to give, to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing or for having done or refrained from doing any act in relation to the obtaining or execution of this Agreement or any other agreement with the Authority or any other public body or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement.

**33.2** The Service Provider warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with this Agreement.

**33.3** The Service Provider shall if so requested provide the Authority with any reasonable assistance to enable it to perform any activity required by any relevant government department or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010 and any related or successor legislation.

**34. PREVENTION OF FRAUD**

 The Service Provider shall take all reasonable steps to prevent a fraud by its employees, servants, agents and/or sub-contractors in connection with the receipt of monies under this Agreement. The Service Provider shall notify the Authority immediately if it has reason to suspect that any Prohibited Act has occurred or is occurring or is likely to occur.

**35. SURVIVAL OF TERMS**

Nothing in this Agreement shall affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication to come into force or continue in force upon termination or expiry of this Agreement.

36. NOTICES

**36.1** Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, post or email and if by post must be addressed to the recipient at its registered office, the address stated in **Schedule 1** or any other address (including an email address) notified to the other Party in writing in accordance with this Clause 36 as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:

36.1.1 if delivered by hand, at the time of delivery;

36.1.2 if delivered by post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays); or

36.1.3 if delivered by email, at the time of transmission, provided that a confirming copy is sent by first class post to the other Party or Parties within 24 hours after transmission.

**37. NO FETTER**

Notwithstanding anything to the contrary in this Agreement, the Authority’s discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Agreement.

**38. ASSIGNMENT AND SUB-CONTRACTING**

**38.1** The Service Provider shall not assign or sub-contract all or any part of the Services without the prior written consent of the Authority.

**38.2** Where the Service Provider sub-contracts all or any part of the Services to any person, the Service Provider shall:

38.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Service Provider under this Agreement insofar as they relate to the Services or part of them (as the case may be) which that sub-contractor is required to provide;

38.2.2 be responsible for payments to that person; and

38.2.3 remain solely responsible and liable to the Authority for any breach of performance, non-performance, part-performance or delay in performance of any of the Services by any sub-contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Service Provider.

## 38.3 The Authority may assign, novate or otherwise transfer this Agreement (in whole or in part) without the consent of the Service Provider.

**38.4** Within 10 Working Days of a written request from the Authority, the Service Provider shall at its own expense execute such agreement as the Authority or and/or may reasonably require to give effect to any such transfer of all or part of the rights and obligations under this Agreement to one or more persons nominated by the Authority.

**39. VARIATION**

**39.1** This Agreement may only be varied or amended with the written agreement of both Parties to this Agreement.

**39.2** Where the Authority and the Service Provider wish to vary or amend the Services the details of any variations or amendments shall be set out in the form at **Schedule 7** and such variation or amendment shall not be binding upon the Parties unless the form is completed and executed by the duly authorised representatives of the Authority and the Service Provider.

**40. FURTHER ASSURANCE**

Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of this Agreement.

41. COSTS

Each Party will pay its own charges, costs and expenses in the performance of its own obligations in this Agreement and the negotiation, preparation and execution of this Agreement.

**42. ENTIRE AGREEMENT**

**42.1** Subject to Clause 42.2:

42.1.1 this Agreement and any and all documents referred to in this Agreement contain all of the terms which the Parties have agreed relating to the subject matter of this Agreement which shall supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. No Party has been induced to enter into this Agreement by a statement which it does not contain; and

44.1.2 without prejudice to the Service Provider’s obligations under this Agreement, the Service Provider is responsible for and shall make no claim against the Authority in respect of any misunderstanding affecting the basis of the Service Provider’s tender in respect of this Agreement or any incorrect or incomplete information howsoever obtained.

**42.2** Nothing in this Clause 42 excludes any liability which a Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

**43. MODERN SLAVERY**

The Service Provider shall comply with the provisions of the Modern Slavery Act 2015.

**44. PREVENT**

The Service Provider shall ensure their employees and agents have a good understanding of the need to prevent people being drawn into terrorism and In the event of there being a concern about a person, notify the Authority.

**45. SAFEGUARDING**

The Authority shall ensure that all individuals engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (DBS) including a check against the adults' barred list or the children's barred list, as appropriate and the Service Provider shall monitor the level and validity of the checks for each member of staff.

**46. WHISTLEBLOWING**

The Service Provider shall comply with the Public Interest Disclosure Act 1998 and with the Authority’s whistleblowing policy.

**47. LAW AND JURISDICTION**

This Agreement shall be subject to and construed in accordance with the Laws of England and the Parties hereby submit to the exclusive jurisdiction of the English courts.

**IN WITNESS** whereof this Agreement was executed and delivered as a **DEED** on the date abovewritten

**THE COMMON SEAL** of )

**SWALE BOROUGH COUNCIL** )

was affixed to this Deed which was )

delivered when stated in the presence )

of:

……………………………………………

Authorised Signatory

**EXECUTED** as a **DEED** by )

**COMPANY NAME**  )

acting by )

…………………………………………..

Director

…………………………………………..

Director / Secretary

OR

**AS WITNESS** whereof the Parties have set their hands to this Agreement on the date first abovewritten

**SIGNED** for and on behalf of

**SWALE BOROUGH COUNCIL**

By:

……………………………………………..

Authorised Signatory

**SIGNED** for and on behalf of

**COMPANY NAME**

By:

…………………………………………….

Director

…………………………………………….

Director/Secretary

**SCHEDULE 1 - KEY AGREEMENT INFORMATION**

1. Agreement Reference Number: AXXX
2. Name of Service Provider/s: Click here to enter text.
3. Agreement Commencement Date: Click here to enter a date.
4. Term:
5. The Authority’s Contract Manager:

Name: Click here to enter text.

Address: Click here to enter text.

Tel: Click here to enter text.

Email: Click here to enter text.

1. The Service Provider’s Representative:

Name and Position: Click here to enter text.

Address: Click here to enter text.

Tel: Click here to enter text.

Email: Click here to enter text.

1. The Service Provider’s Key Personnel:

Name and Position: Click here to enter text.

Address: Click here to enter text.

Tel: Click here to enter text.

Email: Click here to enter text.

1. Address for service of notices and other documents in accordance with Clause 38:

For the Authority: Authorised Signatory at the Authority’s normal business address.

For the Service Provider: Click here to enter text.

**SCHEDULE 2 - SERVICES**

Click here to enter text.

**SCHEDULE 3 - STANDARDS AND PERFORMANCE MANAGEMENT REGIME(S) INCLUDING KPIs**

1. The KPIs
	1. The KPIs which the Parties have agreed shall be used to measure the performance of the Services by the Service Provider are contained in the below table.

|  |  |  |  |
| --- | --- | --- | --- |
| **KPI Description** | **Method of calculating service delivery/measurement period** | **Target KPI** | **KPI category (Red/ green)** |
| Click here to enter text. | Click here to enter text. | NUMBER% | Choose an item. |
| Click here to enter text. | Click here to enter text. | NUMBER% | Choose an item. |
| Click here to enter text. | Click here to enter text. | NUMBER% | Choose an item. |

* 1. The Service Provider shall monitor its performance against each Target KPI and shall send the Authority a report detailing the Achieved KPIs in accordance with Clause 11.

**Consistent failure**

1. CONSISTENT FAILURE

In this Agreement, consistent failure shall mean:

(a) a failure to meet

(i) 5 or more of the Target KPIs labelled "Red" in a rolling INSERT NUMBER month period; or

(ii) 10 or more Target KPIs labelled "Green" in a rolling INSERT NUMBER month period.

(iii) OR

(iv) INSERT NUMBER or more Target KPIs in a rolling INSERT NUMBER month period.

(v) AND/OR

(b) the Authority serving INSERT NUMBER Remediation Notices in a rolling INSERT NUMBER month period or INSERT NUMBER Default Notices in a rolling INSERT NUMBER period.

AND/OR

(d) the Service Provider repeatedly breaching any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.

SCHEDULE 4 – CHARGES

1. Calculation of the Charges

The Charges shall be calculated on the basis of the rates and prices set out in this Schedule.

1. Charges Based on a Fixed Price

|  |  |
| --- | --- |
| **Service** | **Monthly cost (£)** |
| INSERT RELEVANT PART OF SERVICES | INSERT FIGURE TO BE CHARGED TO AUTHORITY |
| INSERT RELEVANT PART OF SERVICES | INSERT FIGURE TO BE CHARGED TO AUTHORITY |
| INSERT RELEVANT PART OF SERVICES | INSERT FIGURE TO BE CHARGED TO AUTHORITY |
| **TOTAL** | INSERT FIGURE TO BE CHARGED TO AUTHORITY |

1. Charges Based on Hourly Rates

|  |  |
| --- | --- |
| **Hours of service in invoice period** | **Hourly rate (£)** |
| Up to 100 | INSERT FIGURE PER HOUR TO BE CHARGED TO AUTHORITY |
| 101-200 | INSERT FIGURE PER HOUR TO BE CHARGED TO AUTHORITY |
| 201-300 | INSERT FIGURE PER HOUR TO BE CHARGED TO AUTHORITY |

1. Payment Triggered by Meeting Milestones

|  |  |  |  |
| --- | --- | --- | --- |
| **Work stream** | **Milestone** | **Date completion expected** | **Charge payable on completion (£)** |
| INSERT | INSERT DETAILS | INSERT DATE | INSERT FIGURE |
| INSERT | INSERT DETAILS | INSERT DATE | INSERT FIGURE |
| INSERT | INSERT DETAILS | INSERT DATE | INSERT FIGURE |

1. Menu Pricing

|  |  |
| --- | --- |
| **Type of Fixed Cost** | **Charges (£)** |
| INSERT TYPE OF SERVICE TO BE PROVIDED | INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO AUTHORITY FOR THAT SERVICE |
| INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED | INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO AUTHORITY FOR THAT SERVICE |
| INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED | INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO AUTHORITY FOR THAT SERVICE |
| INSERT TYPE OF SERVICE OR GOODS TO BE PROVIDED | INSERT FIGURE (EXPRESSED AS UNIT COST OR HOURLY RATE) TO BE CHARGED TO AUTHORITY FOR THAT SERVICE |

1. Payment Plan

INSERT DETAILS OF WHEN INVOICES WILL BE SUBMITTED BY THE Service Provider AND WHEN THEY WILL BE DUE FOR PAYMENT

1. Termination Payment Default

In the event that at any time undisputed Charges of £AMOUNT have been overdue for payment for a period of 60 days or more, the Authority will have committed a Termination Payment Default.

**SCHEDULE 5 – SERVICE PROVIDER’S TENDER**

Click here to enter text.

SCHEDULE 6 - CHANGE CONTROL PROCEDURE

1. GENERAL PRINCIPLES

1.1 Where the Authority or the Service Provider sees a need to change this Agreement, the Authority may at any time request, and the Service Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 4.

1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Service Provider shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms before such Change.

1.3 Any discussions which may take place between the Authority and the Service Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.

1.4 Any work undertaken by the Service Provider and the Service Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 4, shall be undertaken entirely at the expense and liability of the Service Provider.

2. PROCEDURE

2.1 Discussion between the Authority and the Service Provider concerning a Change shall result in any one of the following:

2.1.1 no further action being taken; or

2.1.2 a request to change this agreement by the Authority; or

2.1.3 a recommendation to change this agreement by the Service Provider.

2.2 Where a written request for an amendment is received from the Authority, the Service Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Service Provider to the Authority within three weeks of the date of the request.

2.3 A recommendation to amend this Agreement by the Service Provider shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Service Provider at the time of such recommendation. The Authority shall give its response to the Change Control Note within three weeks.

2.4 Each Change Control Note shall contain:

2.4.1 the title of the Change;

2.4.2 the originator and date of the request or recommendation for the Change;

2.4.3 the reason for the Change;

2.4.4 full details of the Change, including any specifications;

2.4.5 the price, if any, of the Change;

2.4.6 a timetable for implementation, together with any proposals for acceptance of the Change;

2.4.7 a schedule of payments if appropriate;

2.4.8 details of the likely impact, if any, of the Change on other aspects of this Agreement including:

(i) the timetable for the provision of the Change;

(ii) the personnel to be provided;

(iii) the Charges;

(iv) the Documentation to be provided;

(v) the training to be provided;

(vi) working arrangements;

(vii) other contractual issues;

2.4.9 the date of expiry of validity of the Change Control Note;

2.4.10 provision for signature by the Authority and the Service Provider; and

2.4.11 details of how the costs that would be incurred by the Parties if the Change subsequently results in the termination of this Agreement under clause 20.1.7 will be apportioned.

2.5 For each Change Control Note submitted by the Service Provider the Authority shall, within the period of the validity of the Change Control Note:

2.5.1 allocate a sequential number to the Change Control Note; and

2.5.2 evaluate the Change Control Note and, as appropriate:

(i) request further information;

(ii) accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Service Provider; or

(iii) notify the Service Provider of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Authority and by the Service Provider shall constitute an amendment to this Agreement.

**SCHEDULE 7 - VARIATION**

**VARIATION FORM**

**Agreement Parties:** to be inserted

**Variation Number:** to be inserted

**Authority’s Contact**:

Name: to be inserted

Telephone: to be inserted

Email: to be inserted

Date: to be inserted

**AUTHORITY FOR VARIATION TO THE SERVICES AND/OR CHARGES**

Pursuant to **Clause 39 (Variation), sub-clause 39.2** of the Agreement, authority is given for the variation to the Services and/or the Charges by duly authorised representatives of the Contracting Authority and the Service Provider. This form must be signed by the Service Provider and returned to the Authority’s Call-off Order Manager to confirm agreement of the variation shown below.

|  |  |
| --- | --- |
| **DETAILS OF VARIATION** | **AMOUNT (£)** |
| Click here to enter text. | Click here to enter text. |
| **ALLOWANCE TO THE AUTHORITY** | Click here to enter text. |
| **EXTRA COST TO THE AUTHORITY** | Click here to enter text. |
| **TOTAL** | Click here to enter text. |

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

**Signed for and on behalf the Authority**

Name: Click here to enter text.

Job Title: Click here to enter text.

……………………………………………………………….

**Signed for and on behalf of the Service Provider**

Name: Click here to enter text.

Job Title: Click here to enter text.

1. Please ensure the Service or Commissioner of works has confirmed that VAT is applicable to the arrangement, that Supplier is VAT registered and the registration number has been provided [↑](#footnote-ref-1)