

DATED

2025

SWALE BOROUGH COUNCIL

and

[REDACTED]

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CONSULTANCY SERVICES AGREEMENT

for

[REDACTED]

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Mid Kent Legal Services  
Ref: S0xxxx

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THIS AGREEMENT is made on the                      day of                      2025

**BETWEEN:**

- (1) **SWALE BOROUGH COUNCIL** of Swale House, East Street, Sittingbourne.  
Kent ME10 3HT (the “**Authority**”); and
- (2) [ ] a company registered under number [ ] and  
whose registered address is [ ] (the “**Consultant**”)(together the  
“**Parties**”).

**WHEREAS:**

- (A) The Authority has selected the Consultant to provide these services and the Consultant is willing and able to provide the services in accordance with the terms and conditions of this Agreement.

**NOW IT IS HEREBY AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

In the Agreement (including the Recitals):

- 1.1 unless the context indicates otherwise the following expressions shall have the following meanings:

“ <b>Agreement</b> ”	means this Agreement, including the Schedules and all other documents referred to in this Agreement;
“ <b>Agreement Commencement Date</b> ”	means the date for commencement of this Agreement specified in <b>Schedule 1</b> ;
“ <b>Authority’s Data</b> ”	means all information and documentation provided by the Authority to the Consultant pursuant to and in connection with this Agreement;
“ <b>Confidential Information</b> ”	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;
“ <b>Contract Details Notice</b> ”	shall have the same meaning as set out in the Procurement Act 2023;

<b>“Contract Information”</b>	<ul style="list-style-type: none"> <li>(i) this Agreement in its entirety (including from time to time agreed changes to the Agreement); and</li> <li>(ii) data extracted from the invoices submitted pursuant to Clause 5 which shall consist of the Consultant’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;</li> </ul>
<b>“Consultant’s Representative”</b>	means the Consultant’s Representative identified in <b>Schedule 1</b> ;
<b>“Consultant’s Personnel”</b>	means all such employees, officers, suppliers, sub-consultants and agents of the Consultant as are engaged in the performance of any of the Services and including the Key Personnel;
<b>“Contract Manager”</b>	means the Authority’s Representative identified in <b>Schedule 1</b> ;
<b>“Data Controller”</b>	shall have the same meaning as set out in the Data Protection Act 2018;
<b>“Data Processor”</b>	shall have the same meaning as set out in the Data Protection Act 2018;
<b>“Data Protection Legislation”</b>	the Data Protection Act 2018 (“ <b>DPA</b> ”), the UK GDPR (General Data Protection Regulation) 2021, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Privacy and Electronic Communications Regulations 2018 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
<b>“Data Subject”</b>	shall have the same meaning as set out in the Data Protection Act 2018;
<b>“Debarment list”</b>	shall have the same meaning as set out in the Procurement Act 2023;
<b>“Excluded or excludable supplier”</b>	shall have the same meaning as set out in the Procurement Act 2023;
<b>“FOI Legislation”</b>	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; and any guidance issued by the Information Commissioner, the Department for Constitutional Affairs or the Department for

	Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
<b>"Force Majeure Event"</b>	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 including pandemic 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 (" <b>Affected Party</b> ") 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;
<b>"Information"</b>	means information recorded in any form held by the Authority or by the Consultant on behalf of the Authority;
<b>"Information Request"</b>	means a request for any Information under the FOI Legislation;
<b>"Insolvency Event"</b>	means any of the following: <ul style="list-style-type: none"> <li>(a) the Consultant and/or the holding company making any voluntary arrangement with its creditors or becoming subject to an administration order;</li> <li>(b) a receiver, administrative receiver, manager, or administrator being appointed over all or part of the business of the Consultant and/or the holding company;</li> <li>(c) being a company, the Consultant and/or the holding company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency);</li> <li>(d) the Consultant and/or the holding company ceasing or threatening to cease to carry on its business for any;</li> <li>(e) being a firm or partnership, upon its dissolution;</li> <li>(f) any similar event to those in (a) to (e)</li> </ul>

	above occurring in relation to the Consultant and/or the holding company under the law of any applicable jurisdiction for those purposes;
<b>“Intellectual Property Rights”</b>	means any patent, know-how, trade mark or name, service mark, design right (in each case whether registered or unregistered), copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;
<b>“Key Personnel”</b>	means the Consultant’s key personnel named as such in <b>Schedule 1</b> ;
<b>“Losses”</b>	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;
<b>“Milestone”</b>	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 <b>Schedule 2</b> ;
<b>“Parties”</b>	means the Authority and the Consultant (including their successors and permitted assignees) and <b>“Party”</b> shall mean either of them as the case may be;
<b>“Personal Data”</b>	shall have the same meaning as set out in the Data Protection Act 2018;
<b>“Prohibited Act”</b>	the following constitute Prohibited Acts: <ul style="list-style-type: none"> <li>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: <ul style="list-style-type: none"> <li>(i) induce that person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function or activity;</li> </ul> </li> <li>(b) to directly or indirectly request, agree to receive or accept any financial or other</li> </ul>

advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;

- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation or common law concerning fraudulent acts;
  - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority.
- (d) any activity, practice or conduct which would constitute one of the offences listed under paragraph (c), if such activity, practice or conduct had been carried out in the UK.

**“Project Plan”**

means the plan (if any) in **Schedule 2** in relation to the performance and timing of the Services which may include Milestones;

**“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 Consultant in Schedule 2; 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;

**“Specification”**

means the plan (if any) and other requirements set out in **Schedule 2**;

**“Term”**

means the period during which this Agreement continues in force as set out in **Schedule 1**;

**“VAT”**

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;

**“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 them 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 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;
- 1.7 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).
- 1.8 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:
  - 1.8.1 the Clauses;
  - 1.8.2 the Schedules;
  - 1.8.3 any other document referred to in or incorporated by reference into this Agreement.
- 1.9 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;
- 1.10 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.11 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

## **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 Consultant 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 Consultant shall provide the Services:
- 3.2.1 with the high degree of skill, care, ability and diligence normally exercised by recognised professional firms or by highly skilled and experienced consultants 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 Consultant shall comply with all lawful and reasonable directions of the Authority relating to its performance of the Services.
- 3.4 Unless it has been specifically authorised to do so by the Authority in writing, the Consultant shall not:
- 3.4.1 have any authority to incur any expenditure in the name of or for the account of the Authority; or
  - 3.4.2 hold itself out as having authority to bind the Authority.

#### **4. FEES AND CHARGES**

- 4.1 The Consultant 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 Consultant, the Authority shall pay the Consultant the Fees and Charges in accordance with those procedures.
- 4.2 The Consultant is not entitled to reimbursement for expenses unless such expenses are specified in **Schedule 2** or have been incurred with the prior written consent of the Authority, in which case the Consultant shall supply appropriate evidence of expenditure in a form acceptable to the Authority.
- 4.3 All Charges exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.

#### **5. PAYMENT PROCEDURES AND APPROVALS**

- 5.1 The Consultant shall invoice the Authority in respect of the Fees and Charges monthly in arrears during or at such dates or at the end of such other periods as may be specified **Schedule 2**.
- 5.2 It is a condition precedent of the submission of an invoice on completion of a milestone that all preceding milestones specified in **Schedule 2** have been completed.

- 5.3 The Consultant 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 Consultant's name and address, 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.
- 5.3A The Authority is the end user for the purposes of section 55A of the VAT Act 1994 reverse charge for building and construction services. The Consultant should issue a normal VAT invoice, with VAT charged at the appropriate rate. The Authority will not account for the reverse charge.
- 5.4 The Authority shall accept and process for payment an electronic invoice submitted for payment by the Consultant where the invoice is undisputed and where it complies with the standard on electronic invoicing.
- 5.5 For the purposes of clause 5.4, an electronic invoice complies with the standard on electronic invoicing where it complies with the standard on electronic invoicing in the Public Procurement (Electronic Invoices etc.) Regulations 2019.
- 5.6 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 Consultant, the Consultant shall identify these separately on the relevant invoice.
- 5.7 If the Authority considers that the Charges claimed by the Consultant in any invoice have:
- 5.7.1 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 **Schedule 2**; or
  - 5.7.2 not been calculated correctly and/or if the invoice contains any other error or inadequacy, the Authority shall notify the Consultant and the Parties shall work together to resolve the error or inadequacy. Upon resolution, the Consultant shall submit a revised invoice to the Authority.
- 5.8 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:
- 5.8.1 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 Consultant, or otherwise prejudice any rights, powers or remedies which the Authority may have against the Consultant or absolve the Consultant from any obligation or liability imposed on the Consultant; or

- 5.8.2 prevent the Authority from recovering any amount overpaid or wrongfully paid including payments made to the Consultant 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 Consultant or the Authority may recover such amount as a debt due under this Agreement.
- 5.9 Where the Consultant enters into a Sub-Contract, the Consultant shall include in that Sub-Contract:
  - 5.9.1 provisions having the same effect as clause 5.3 to clause 5.9 of this Agreement; and
  - 5.9.2 a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 5.3 to clause 5.9 of this Agreement.

In this clause 5.9, "**Sub-Contract**" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

## **6. CONSULTANT'S WARRANTIES**

- 6.1 The Consultant warrants and represents that:
  - 6.1.1 it has the full capacity and has taken all steps and obtained all approvals and consents required to enable it to lawfully enter into and perform each of its obligations under this Agreement;
  - 6.1.2 this Agreement shall be executed by its duly authorised representatives;
  - 6.1.3 the information supplied by the Consultant is true and accurate in all material respects;
  - 6.1.4 there are no material facts or circumstances in relation to the financial position or operational constitution of the Consultant 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
  - 6.1.5 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 Consultant shall deal with the Contract Manager (or his or her Nominated Representative) in respect of all matters arising under this Agreement.
- 7.2 The Consultant shall appoint a Consultant's Representative who shall be duly authorised for all purposes in connection with this Agreement and the

Consultant shall provide the Key Personnel. The Consultant'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 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 Consultant may only make any changes to the Consultant'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.
- 7.5.1 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 Consultant of any its duties, responsibilities, obligations or liabilities under this Agreement.

#### 7.5 **KPIs Agreements over £5m**

- 7.5.1 The Consultant shall comply with the Key Performance Indicators (KPIs) set out in **Schedule 4** of this Agreement.
- 7.5.2 The Authority shall publish a Contract Performance Notice on a [monthly/quarterly/annual] basis that will include the Consultant's performance against the KPIs.
- 7.5.3 Failure to meet the KPIs may result in [penalties/termination of the contract], as detailed in Schedule 4.

#### 7.6 **Contract Details Notice**

- 7.6.1 Within 30 days (120 days if light touch) of the Agreement Commencement Date, the Authority shall publish a Contract Details Notice, which will include:
  - 7.6.1.1 The KPIs (if any) as set out in Schedule 4; and
  - 7.6.1.2 Details of the Agreement (title, reference number, name of the parties); and
  - 7.6.1.3 The Agreement's duration and any extension options.
  - 7.6.1.4 The Parties acknowledge and agree that all procurement activities under this Agreement shall comply with the requirements of the Procurement Act 2023, including but not limited to the publication of mandatory notices. The Parties shall ensure that all mandatory notices as required under the Act are duly published in accordance with the timelines and procedures set forth in the Act and its associated regulations.

## **8. HEALTH AND SAFETY**

- 8.1 The Consultant 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 Consultant shall require the Consultant's Personnel to comply with the reasonable directions and requirements of the Authority's safety advisers.
- 8.3 The Consultant 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 Consultant's approved Health and Safety Policy and the Health and Safety at Work etc., Act 1974 and any other relevant legislation including the Health and Safety (Amendment) (EU Exit) Regulations 2018.
- 8.4 The Consultant 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 Consultant's Personnel and other staff carrying out the Services.
- 8.5 The Consultant shall direct the Consultant's Personnel 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 Consultant's Staff**

- 9.1.1 The Consultant shall at all times during the Term ensure that the Consultant's Personnel 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 Consultant 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 Consultant 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 Consultant 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 Consultant to discipline or remove from the performance of the Services any of the Consultant's Personnel engaged in the provision of the Services. The Authority shall not be liable to either the Consultant or to such

Consultant's Personnel for any claims arising from any disciplinary action or removal as a result of the Authority's notice to the Consultant and the Consultant shall indemnify the Authority against any such claims.

## **10. PERFORMANCE AND MONITORING**

### **10.1 Performance Standards**

The Consultant shall throughout the Term perform the Services so as to meet the minimum performance standards set out for the Services in **Schedule 2**.

### **10.2 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 **Schedule 2** or otherwise agreed between the Contract Manager and the Consultant's Representative.

## **11. RECORDS, AUDIT AND INSPECTION**

### **11.1 The Consultant shall and shall procure that its sub-consultants shall:**

11.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Consultant's obligations under this Agreement and all transactions entered into by the Consultant for the purposes of this Agreement including time-sheets for the Consultant's Personnel where such records are material to the calculation of the Fees and Charges ("**Records**");

11.1.2 retain all Records during the Term and return such Records (including all data and / or information covered by the Data Protection Act 2018 and UK GDPR) to the Authority immediately at the end of the Agreement, whether by expiry or termination, for retention by the Authority for a period of not less than six (6) twelve (12) years (or such longer period as may be required by law).

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

## **12. SET-OFF**

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

### 13. INDEMNITIES

- 13.1 Subject to Clause 13.2, the Consultant 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 Consultant's Personnel 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 Consultant's Personnel.
- 13.2 The Consultant 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.
- 13.3 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.

### 14. INSURANCE

- 14.1 The Consultant 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:
- 14.1.1 Public liability insurance with a limit of indemnity of not less than **£5 million** in relation to any one claim;
- 14.1.2 Employers liability insurance with a limit of indemnity of not less than **£10 million** in relation to any one claim;
- 14.1.3 Professional indemnity insurance with a limit of indemnity of not less than **£2 million**; and
- 14.1.4 All other insurances required by law.
- 14.2 The Consultant 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.
- 14.3 The Consultant 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 14.1.
- 14.4 In the event that in the opinion of the Contract Manager any policies of insurance referred to in Clause 14.1 do not effect sufficient cover to comply with this Agreement then the Contract Manager shall be entitled to notify the Consultant of the Authority's requirement for the Consultant to effect any such insurances as will ensure that the Consultant complies with its obligation in terms of Clause 14.1. Upon receipt of such notice the Consultant shall

immediately procure and affect such insurance as notified by the Contract Manager.

- 14.5 In the event that the Consultant does not effect such insurance the Authority may take out such insurance on behalf of the Authority in which case the Consultant shall pay on demand the cost to the Authority of taking out such insurance.

## **15. DATA PROTECTION**

- 15.1 The Consultant acknowledges the Authority's ownership of Intellectual Property Rights which may subsist in the Authority's Data. The Consultant shall not delete or remove any copyright notices contained within or relating to the Authority's Data.
- 15.2 The Consultant and the Authority shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the Authority's Data and to prevent any corruption or loss of the Authority's Data.
- 15.3 With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Authority is a Data Controller and that the Consultant is a Data Processor.
- 15.4 The Consultant shall:
- 15.4.1 Process the Personal Data only in accordance with instructions from the Authority to perform its obligations under this Agreement;
  - 15.4.2 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;
  - 15.4.3 not disclose or transfer the Personal Data to any third party or Consultant 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);
  - 15.4.4 take all reasonable steps to ensure the reliability and integrity of any Consultant Personnel who have access to the Personal Data and ensure that the Consultant Personnel:
    - 15.4.4.1 are aware of and comply with the Consultant's duties under this Clause and Clause 17 (Confidentiality);
    - 15.4.4.2 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



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

15.4.5 notify the Authority within five Working Days if it receives:

15.4.5.1 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;

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

15.4.5.3 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;

15.4.6 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 15.4.5, including by promptly providing:

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

15.4.6.2 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

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

15.4.7 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.

15.5 The Consultant 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 Consultant or any Sub-contractor wishes to Process and/or transfer

any Personal Data in or to any Restricted Countries, the following provisions shall apply:

15.5.1 the Consultant 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 15.3.2 to 15.3.4

15.5.2 the Consultant shall set out in its Change Request and/or Impact Assessment details of the following:

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

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

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

15.5.2.4 how the Consultant 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;

15.5.3 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

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

15.5.4.1 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

15.5.4.2 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 Consultant 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 Consultant 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.

- 15.6 The Consultant 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 Consultant is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

## **16. INTELLECTUAL PROPERTY RIGHTS**

- 16.1 Save as the Parties may otherwise agree (in writing), the Consultant 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 Consultant 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 proving the Services.
- 16.2 The Consultant 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.

## **17. CONFIDENTIALITY**

- 17.1 Subject to Clauses 15 and 17.6, the Consultant shall keep confidential:
  - 17.1.1 the terms of this Agreement and any agreed variation thereto; and
  - 17.1.2 all Confidential Information that it may acquire in relation to the Authority.
- 17.2 The Consultant will not use the Authority's Confidential Information for any purpose other than to perform its obligations under this Agreement. The Consultant will ensure that the Consultant's Personnel will comply with the provisions of Clause 17.1.
- 17.3 The obligations of the Consultant set out in Clause 17.1 shall not apply to any Confidential Information which:

- 17.3.1 either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 17); or
- 17.3.2 a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure.
- 17.4 The Consultant shall keep secure all data and materials containing any information in relation to the Agreement and its performance.
- 17.5 The Consultant 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.
- 17.6 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 Consultant regarding any redactions to the Contract Information to be published pursuant to this Clause 17.6. The Authority shall make the final decision regarding publication and/or redaction of the Contract Information.

## **18. FREEDOM OF INFORMATION**

- 18.1 The Consultant acknowledges that the Authority:
  - 18.1.1 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
  - 18.1.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Consultant.
- 18.2 Without prejudice to the generality of Clause 18.1, the Consultant shall and shall procure that its sub-consultants (if any) shall:
  - 18.2.1 transfer to the Contract Manager (or such other person as may be notified by the Authority to the Consultant) 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 two Working Days of receiving such Information Request; and
  - 18.2.2 in relation to Information held by the Consultant 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.
- 18.3 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 Consultant shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Authority.

- 18.4 The Consultant acknowledges that the Authority is subject to the Local Government Transparency Code 2015 ("the Code") and is obliged to publish details of all new contracts which will mean that data will be disclosed in compliance with the Code.

## **19. TERMINATION**

- 19.1 Without affecting any other right or remedy available to it, the Authority may terminate this Agreement on giving not less than 1 month's written notice to the Consultant.
- 19.2 Without prejudice to the Authority's right to terminate at common law, the Authority may terminate this Agreement immediately upon giving notice to the Consultant, if the Consultant:

19.2.1 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 ten Working Days (or such other period as specified in writing by the Authority) from the date of written notice to the Consultant giving details of the breach and requiring it to be remedied; or

19.2.2 is subject to an Insolvency Event; or

19.2.3 commits a breach of Clause 6 (Consultant's Warranties); or

19.2.4 commits a breach of Clause 17 (Confidentiality); or

19.2.5 commits a Prohibited Act; or

19.2.6 commits a breach of Clause 31 (Assignment, Sub-contracting and Change of Ownership).

## **19.3 Force Majeure**

19.3.1 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.

19.3.2 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.

19.3.3 Without 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.

#### **19.4 Replacement Consultant**

19.4.1 In the event that the Authority terminates this Agreement in accordance with Clause 19.1, then the Consultant shall indemnify the Authority in respect of procuring the performance of the Services by a Replacement Consultant in accordance with Clause 19.4.2.

19.4.2 On termination of this Agreement under Clause 19.2, the Authority may enter into any agreement with any third party or parties to provide any or all of the Services and the Consultant 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 Consultant as a debt due.

#### **19.5 Debarment**

19.5.1 The Authority reserves the right to terminate this Agreement if the Consultant or any of its sub-contractors become an excluded or excludable supplier and/or enters the debarment list as per Section 62 of the Procurement Act 2023 or the Authority becomes aware of such status after the Agreement Commencement Date.

19.5.2 The Consultant shall notify the Authority immediately upon becoming aware of such inclusion.

19.5.3 In the event of termination under this clause, the Authority shall not be liable for any costs or damages incurred by the Consultant as a result of such termination.

### **20. CONSEQUENCES OF TERMINATION AND EXPIRY**

20.1 Upon termination, the Consultant 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 Consultant.

20.2 Notwithstanding the provisions of Clause 17 (Confidentiality) whenever the Authority chooses to put out to tender for a replacement consultant some or all of the Services, the Consultant shall disclose to tenderers such information concerning the Services as the Authority may require for the purposes of such tender. The Consultant may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.

20.3 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.

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

20.4.1 the Consultant 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

20.4.2 the Authority shall (subject to its accrued rights of set off and deduction) pay the Consultant 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.

## 21. DISPUTE RESOLUTION

21.1 The Authority and the Consultant 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.

21.2 If the Dispute is not settled through discussion between the Contract Manager and a representative of the Consultant 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.

21.3 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.

21.4 Where a Dispute is referred to mediation under Clause 21.3, 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.

21.5 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.

21.6 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.

21.7 Unless otherwise instructed by the Authority, the Consultant 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 21.

- 21.8 Neither Party shall be prevented from seeking any order for specific performance or injunctive relief as a result of the provisions of this Clause 21 which shall not apply to any dispute where these or any other equitable remedies are sought.

## **22. BUSINESS CONTINUITY PLAN**

- 22.1 The Consultant 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.
- 22.2 The BCP shall be maintained and regularly tested by the Consultant throughout the Term of this Agreement. The results of such testing shall be forwarded to the Contract Manager within five 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 Consultant at its expense should such alterations be judged by the Contract Manager as needed for sustaining the proper performance of the Services.

## **23. SUSTAINABILITY**

The Consultant 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.

## **24. EQUALITY**

- 24.1 The Consultant is required to have in place an equal opportunities (Equalities) policy at the Commencement Date of this Agreement and throughout the Term. This policy must specify that the Consultant will not treat the Consultant's Personnel less favourably on the grounds of their colour, race, ethnic, or national origin, nationality (including citizenship), marital status, marriage and civil partnership, pregnancy and maternity, sex, sexual orientation, age, religion or belief or because they have a disability.
- 24.2 The Consultant shall take all reasonable steps to secure that the Consultant's Personnel do not unlawfully discriminate and comply with the Consultant's obligations under Clause 24.1.
- 24.3 In the performance of the Services and in its dealings with service users, the Authority's employees and members of the general public the Consultant shall comply and ensure the Consultant's Personnel comply with:



- 24.3.1 the Human Rights Act 1998 as if the Consultant was a public body (as defined in the Human Rights Act 1998);
- 24.3.2 all law relating to equal opportunities including without limitation relating to disability, discrimination, sex discrimination, and race relations; and
- 24.3.3 the Authority's equal opportunities ("**Equalities**") policies and procedures as may be adopted and amended from time to time and as notified to the Consultant.

## **25. WAIVER**

- 25.1 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 31 (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.
- 25.2 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.

## **26. SEVERABILITY**

- 26.1 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.
- 26.2 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.

## **27. 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.

## **28. 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.

## **29. PREVENTION OF BRIBERY**

- 29.1 The Consultant represents and warrants that neither it, nor to the best of its knowledge any Consultant's Personnel, have at any time prior to the Commencement Date:
- 29.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - 29.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 29.2 The Consultant shall not during the term of this Agreement:
- 29.2.1 commit a Prohibited Act; and/or
  - 29.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
- 29.3 The Consultant shall during the term of this Agreement:
- 29.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
  - 29.3.2 keep appropriate records of its compliance with its obligations under Clause 29.3.1 and make such records available to the Authority on request.
- 29.4 The Consultant shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 29.1 and/or Clause 29.2, or has reason to believe that it has or any of the Consultant's Personnel have:
- 29.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 29.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

- 29.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 29.5 If the Consultant makes a notification to the Authority pursuant to Clause 29.4, the Consultant shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 11 (Records, Audit and Inspection).
- 29.6 If the Consultant is in Default under Clause 29.1 and/or Clause 29.2, the Authority may by notice:
- 29.6.1 require the Consultant to remove from performance of this Agreement any Consultant's Personnel whose acts or omissions have caused the Default; or
- 29.6.2 immediately terminate this Agreement.
- 29.7 Any notice served by the Authority under Clause 29.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

### **30. SURVIVAL OF TERMS**

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

### **31. NOTICES**

- 31.1 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 31 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:
- 31.1.1 if delivered by hand, at the time of delivery;
- 31.1.2 if delivered by post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays); or
- 31.1.3 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.

## **32. AUTHORITY'S STANDING ORDERS**

- 32.1 The Consultant shall comply with all the requirements of the Authority's constitution and/or 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.
- 32.2 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.

## **33. ASSIGNMENT, SUB-CONTRACTING AND CHANGE OF OWNERSHIP**

- 33.1 The Consultant shall not assign or sub-contract all or any part of the Services without the prior written consent of the Authority.
- 33.2 Where the Consultant sub-contracts all or any part of the Services to any person, the Consultant shall:
  - 33.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Consultant under this Agreement insofar as they relate to the Services or part of them (as the case may be) which that sub-consultant is required to provide;
  - 33.2.2 be responsible for payments to that person; and
  - 33.2.3 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-consultant to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Consultant.
- 33.3 The Consultant shall:
  - 33.3.1 not without the prior written consent of the Authority undergo any change in the ownership of the Consultant where such change relates to 50% or more of the issued share capital of the Consultant; and
  - 33.3.2 give notice to the Authority in the event that there is any change in the ownership of the holding company where such change relates to 50% or more of the issued share capital of the holding company, such notice to be given within ten Working Days of the date on which such change takes effect.
- 33.4 The Authority may assign, novate or otherwise transfer this Agreement (in whole or in part) without the consent of the Consultant.
- 33.5 Within ten Working Days of a written request from the Authority, the Consultant 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.

### **34. VARIATION**

- 34.1 This Agreement may only be varied or amended with the written agreement of both Parties to this Agreement.
- 34.2 Where the Authority and the Consultant wish to vary or amend the Services the details of any variations or amendments shall be set out in the form at **Schedule 3** 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 Consultant.
- 34.3 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.

### **35. 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.

### **36. ENTIRE AGREEMENT**

- 36.1 Subject to Clause 36.2:
- 36.1.1 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
- 36.1.2 without prejudice to the Consultant's obligations under this Agreement, the Consultant is responsible for and shall make no claim against the Authority in respect of any misunderstanding affecting the basis of the Consultant's tender in respect of this Agreement or any incorrect or incomplete information howsoever obtained.
- 36.2 Nothing in this Clause 36 excludes any liability which a Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

### **37. MODERN SLAVERY**

- 37.1 The Consultant must have awareness of and shall comply (and shall procure that the Consultant's Personnel comply) with the provisions of the Modern Slavery Act 2015. In the event of there being a concern about a person, the Consultant shall notify the Authority.

## 38. PREVENT

- 38.1 The Consultant shall ensure that the Consultant's Personnel have a good understanding of the need to prevent people being drawn into terrorism and shall (and shall procure that the Consultant's Personnel shall) comply with the requirements of the Counter-Terrorism and Border Security Act 2019 (CTSA19) (including any guidance, amendments and all subsequent regulations made pursuant to this Act and any Authority policies) and will co-operate with the Authority in ensuring the Authority's compliance with its obligations under CTSA19 and in particular the obligation to have due regard to the need to prevent people from being drawn into terrorism in the exercise of its functions (the "Prevent duty"); and
- 38.2 in the event of there being a concern about a person, notify the Authority.

## 39. SAFEGUARDING

This Clause should provide meaningful controls proportionate to the level of risk. Where controls need to be applied the Consultant shall take a positive action (e.g. provide safeguarding training to their staff) rather than a passive action (e.g. provide a copy of their safeguarding policy). Where relevant, the Consultant should have their own safeguarding policy and procedures in place. Where the Consultant outsources any part of the Services to a third party, the third party is required to have adequate safeguarding procedures in place.

Choose which Level of Risk this Agreement requires and delete the other three Levels.

- 39.1 This is a back office service where there is no contact with vulnerable people.

OR

- 39.1 The Consultant shall take the following actions in respect of safeguarding where;

**Bronze Level** - there is limited contact with children, young people or vulnerable adults, or where contact is indirect, peripheral and in a public space or environment. The Consultant shall ensure that Consultant Personnel have been provided with a basic level of safeguarding training providing an awareness and understanding of the Consultant's safeguarding responsibilities and how to report any safeguarding concerns regarding a child or adult at risk.

OR

**Silver Level** – the Services will be delivered to the public and there is likely to be regular contact with children, young people and/or vulnerable adults.

The Consultant shall create and maintain a risk assessment of the way it provides the Services and shall appropriately assess the level of responsibility and contact Consultant Personnel will have with children and vulnerable adults. If such contact is likely to occur, the Consultant Personnel shall be given appropriate training according to access and risk. The Consultant shall also ensure that all Contractor Personnel engaged in the provision of the Services are subject to a valid enhanced disclosure

check undertaken through the Disclosure and Barring Service including a check against the adults' or children's barred list, as appropriate, and the Consultant shall monitor the level and validity of these checks for each individual annually.

The Consultant warrants that at all times, for the purposes of this Agreement, it has no reason to believe that any Consultant Personnel engaged by the Consultant in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

The Consultant shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 39.1 have been met.

The Consultant shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out, Regulated Activity as defined in the Safeguarding Vulnerable Groups Act 2006 or who may otherwise present a risk to service users.

The Consultant will liaise with the Contract Manager as a confidential point of contact in order for the Consultant to provide the Authority with a summary of safeguarding concerns that the Consultant has had to manage.

**OR**

**Gold Level** – the Services will be delivered directly to children, young people and/or vulnerable adults.

The Consultant shall create and maintain a risk assessment of the way it provides the Services and shall appropriately assess the level of responsibility and contact Consultant Personnel will have with children and vulnerable adults. All Consultant Personnel shall be given appropriate training according to access and risk.

The Consultant shall provide confirmation that training is completed, and details of scheduled refresher training provided, to the Authority. Regular contract monitoring meetings with the Consultant (see Clause 7.2.2) shall incorporate information exchange about safeguarding concerns or incidents.

The Parties acknowledge that the Consultant is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

The Consultant shall ensure that all Contractor Personnel engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' or children's barred list, as appropriate, and the Consultant shall monitor the level and validity of these checks for each individual annually.

The Consultant warrants that at all times for the purposes of this agreement it has no reason to believe that any Consultant Personnel engaged by the Consultant in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

The Consultant shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 39.1 have been met.

The Consultant shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

The Consultant will liaise with the Contract Manager as a confidential point of contact in order for the Consultant to provide the Authority with a summary of safeguarding concerns that the Consultant has had to manage and to refer information about any person carrying out the Services where the Consultant has or intends to remove permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any service users/children/vulnerable adults.

#### **40. GOVERNING LAW AND JURISDICTION**

- 40.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Laws of England.
- 40.2 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).



**IN WITNESS** whereof this Agreement has been executed by the Parties [as a Deed]  
the execution clause used is dependent on the value of the contract (if sealing is  
required, seek advice from Legal) in accordance with their respective constitutions:

Signed for and on behalf of  
**SWALE BOROUGH COUNCIL**

.....  
Authorised Signatory

.....  
Print Name of Authorised Signatory

Signed for and on behalf of

[ ]

.....  
Authorised Signatory

.....  
Print Name of Authorised Signatory

## SCHEDULE 1 - KEY AGREEMENT INFORMATION

1. Agreement Reference Number:

2. Name of Consultant:

3. Agreement Commencement Date:

4. Term:

5. The Authority's Contract Manager:

Name:

Address: Swale Borough Council, Swale House, East Street, Sittingbourne.  
Kent ME10 3HT

Tel:

Email:

6. The Consultant's Representative:

Name and Position:

Address:

Tel:

Email:

7. The Consultant's Key Personnel:

Name and Position:

Address:

Tel:

Email:

8. Address for service of notices and other documents in accordance with Clause 36:

For the Authority:

Head of Legal Partnership at the  
Authority's normal business address.

For the Consultant:

## **SCHEDULE 2 – SERVICES, FEES and CHARGES**

**[ Add details ]**

### SCHEDULE 3 - 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 34 (Variation)**, sub-clause **34.2** 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 Consultant. This form must be signed by the Consultant and returned to the Authority's Call-off Order Manager to confirm agreement of the variation shown below.

DETAILS OF VARIATION	AMOUNT (£)
ALLOWANCE TO THE AUTHORITY	
EXTRA COST TO THE AUTHORITY	
TOTAL	

.....  
**Signed for and on behalf the Authority**

Name:

Job Title:

.....  
**Signed for and on behalf of the Consultant**

Name:

Job Title:

## **SCHEDULE 4 – KEY PERFORMANCE INDICATORS (KPIs)**

**ADD DETAILS**