

DN571228 - Cleaning of Whitfield Offices Dover District Council - Kent Gurkha Company Ltd

Criteria Used	Number of Bids Received	Ammendments/Modifications	Subcontractors	Conflicts of Interest	Audits/Reviews
40% Quality 60% Cost	19 Compliant bids	No	No	No	No Audits have taken place however reviews are carried out as per the Specification

1.0 SPECIFICATION

1.01 Materials

The Contractor shall provide all cleaning products, consumables, materials, plant, equipment and protective clothing for the duration of the Contract.

Only environmentally friendly chemicals/cleaning products are to be used.

The Contractor should note that the Council offices have waterless urinals and thus only approved bactericidal cleaning products can be used in the urinals.

1.02 Cleaning Equipment

The Contractor shall be responsible for supplying and maintaining all plant and equipment necessary to clean the offices. This shall include vacuums which should be emptied and serviced with new filters regularly.

There will be a colour coding system to prevent cross contamination during the cleaning process which the Contractor will be required to adhere to.

The table below explains areas where colour equipment must be used.

	Red Cloth Red Bucket Red Mop Head	Sanitary Fittings, Toilets Floor
	Yellow Cloth Yellow Bucket Yellow Mop Head	Shower room
	Green Cloth Green Bucket Green Mop Head	Food Areas – Kitchens
	Blue Cloth Blue Bucket Blue Mop Head	All other areas

1.03 Cleaning Performance Standards

- a) **Carpets.** To be thoroughly clean, free of debris, with attention to edges on vacuuming days. When required or requested clean isolated spills/stains with a propriety stain remover.
- b) **Vinyl and ceramic tiled floors.** To be thoroughly clean, stain and debris free with attention to edges. When required or requested additional cleaning will include removing ground-in stains and scuff marks.
- c) **Skirtings, tables, book cases, filing cabinets, static furniture, window cills, shelves, banisters and wall hangings.** Where accessible should be dust/stain free to hand height (although high ledges should be dusted with a long handled duster). Hand height shelves, ledges, table tops, countertops and cupboard tops to be cleaned with a spray polish.
- d) **Desks.** Exposed surfaces of desks that are clear of paperwork to be dust and

stain free and cleaned with a spray polish.

- e) **Internal glass and mirrors.** To be clean and smear free with no streaks.
- f) **Vertical finishes.** Painted plastered walls adjacent to bins, drinks machines and under toilet hand-dryers to be clean and stain free. Vertical tiling to be clean, stain free with no lime-scale. Toilet cubicles, laminate boarding within toilets and kitchen unit doors to be clean and smear free with no stains and free of lime-scale.
- g) All cobwebs wherever are to be removed.
- h) **Door push plates and door furniture.** To be clean and smear free.
- i) **Stainless steel sinks and taps.** To be clean, smear, stain and lime-scale free and buffed to a shine.
- j) **Lift doors and stainless steel control panel.** To be clean and smear free.
- k) **Fire extinguishers.** To be clean and dust free.
- l) **Sanitary fittings and toilet seats.** To be clean, stain free, dust free, smear free with no lime-scale.
- m) **Exposed pipes and accessible radiators.** To be clean and dust free
- n) **Microwaves, cookers and white appliances** within kitchens to be thoroughly clean, stain and debris free with attention to corners.

1.04 In addition to the cleaning performance standards in 1.03

- a) All surfaces cleaning within ten kitchens and twenty one toilets is to be carried out using a sanitising cleaning product and shall include the light switches and door furniture.
- b) Dirty crockery and utensils within kitchens should be washed up and placed on the draining board
- c) Consumable items within kitchens and bathrooms are to be replenished.

1.05 Surfaces and items not included in this contract:

- a) Computers, screens, desk telephones, keyboards, and screen stand
- b) Cleaning to external windows
- c) External litter picking
- d) Emptying Confidential waste bins
- e) Emptying office recycling waste paper bins

1.06 Refuse Removal

Generally all bins as listed in the table below are to be emptied, wiped clean if required and

Appendix A

a new liner inserted. Dispose of all waste into appropriate DDC wheelie bin each day.

Location	Waste Bin	Approx Qty	Replacement Liner
Kitchens	Mixed recycling bins	10	DDC to supply liner
Kitchens	Recycling food bins	20	DDC to supply liner
Kitchens	General waste bins	10	Contractor to supply liner
Open plan offices	General waste bins	40	Contractor to supply liner
Single occupancy Offices	Small waste bins	10	Contractor to supply liner

1.07 Sanitary Bins

The contractor shall provide and maintain throughout the duration of the contract, 13 sanitary bins of capacity 28 litres manufactured from heavy duty plastic construction with a discretion flap, colour white. Type and style to be as manufactured by Unicorn Containers Limited or similar approved. These shall be located within the ladies toilets and shall be emptied every two weeks to include all clinical waste disposal and handling charges.

1.08 Entrance Mat Cleaning

Provide an exchange and cleaning service for 8 entrance mats to be exchanged for clean mats every 2 weeks.

1.09 Supply Consumables Specification PRICE B

The contractor is to supply consumables for the Council offices toilets and kitchens and a stock of no less than one weeks usage shall be maintained at the offices.

The contractor is to replenish toilets and kitchens as part of the cleaning schedule.

Location	Consumable	Packet size	Monthly Qty
Toilets	Jumbo Rolls	6 per case	10 cases
Toilets	Anti Bacterial Liquid soap	5ltr container	5
Toilets	Spray air fresheners	400ml cans	20 cans
Toilets	Sanitary bags	100 pack	1 pack
Kitchens	Centre feed paper towels	6 per case	10 cases
Kitchens	Washing up liquid	1ltr	20 bottles

1.10 Cleaning Schedule 2022 – 2025 Specification PRICE A

Daily (Monday to Friday excluding bank holidays)

Empty all kitchen waste bins and wipe all wall areas behind bins, refit new bin liners (provided by contractor) wipe bin if not clean.

Empty plastic/metal recycling and food waste recycling bins located in kitchens when full or $\frac{3}{4}$ full. Refit new recycling bin liner (provided by Council)

Clean all hygiene areas in kitchens and toilets, to include sanitisation of door handles, door push-plates and light switches and the removal of human waste on toilet appliances and floors, to include splash backs, tiles and under hand dryers.

Clean all desks, countertop and tables in main reception area and adjoining meeting rooms.

Full vacuum or mop, sweep and dust:

- Main entrance reception area
- (Winter months only unless dirty) Ceramic tiled floor North wing
- (Winter months only unless dirty) Ceramic tiled floor Council Chamber entrance

Spot vacuum corridors, Council chamber, meeting rooms, interview rooms and offices where dirty.

Spot mop and sweep ceramic tiled floor North wing (summer months only)

Spot mop and sweep ceramic tiled floor Council Chamber entrance (summer months only)

Replenish toilet rolls, liquid soaps, sanitary bags and spray can air fresheners.

Spot clean removing fingerprints and marks from internal glass

Weekly

Full vacuum offices every Friday.

Full vacuum corridors, meeting rooms, interview rooms and Council chamber

Full mop staircases, landings and lobbies (winter months only)

Full clean of microwaves, cookers and white appliances within kitchens.

Empty all office general waste bins: (with the exception of kitchens which should be emptied daily)

Staff who wish to have their desks cleaned/polished are requested to clear their desks and notify the cleaner. The Supplier shall allow for cleaning/polishing up to 30% desks per week

Thoroughly clean shower room on a Wednesday. Check and wipe over on a Friday. **To include dipping and disinfecting of shower head into a bucket of disinfectant to avoid aerosol release.**

Monthly

Dust all office areas, to include skirting boards, furniture, picture frames and any ledges up to hand height.

Take up door mats, clean all mat wells and replace mats.

Dust skirting boards, furniture, picture frames and any ledges up to hand height and what can be reached at height level using a handled duster.

Full pane clean of internal glass up to hand height

Full mop staircases, landings and lobbies (summer months only)

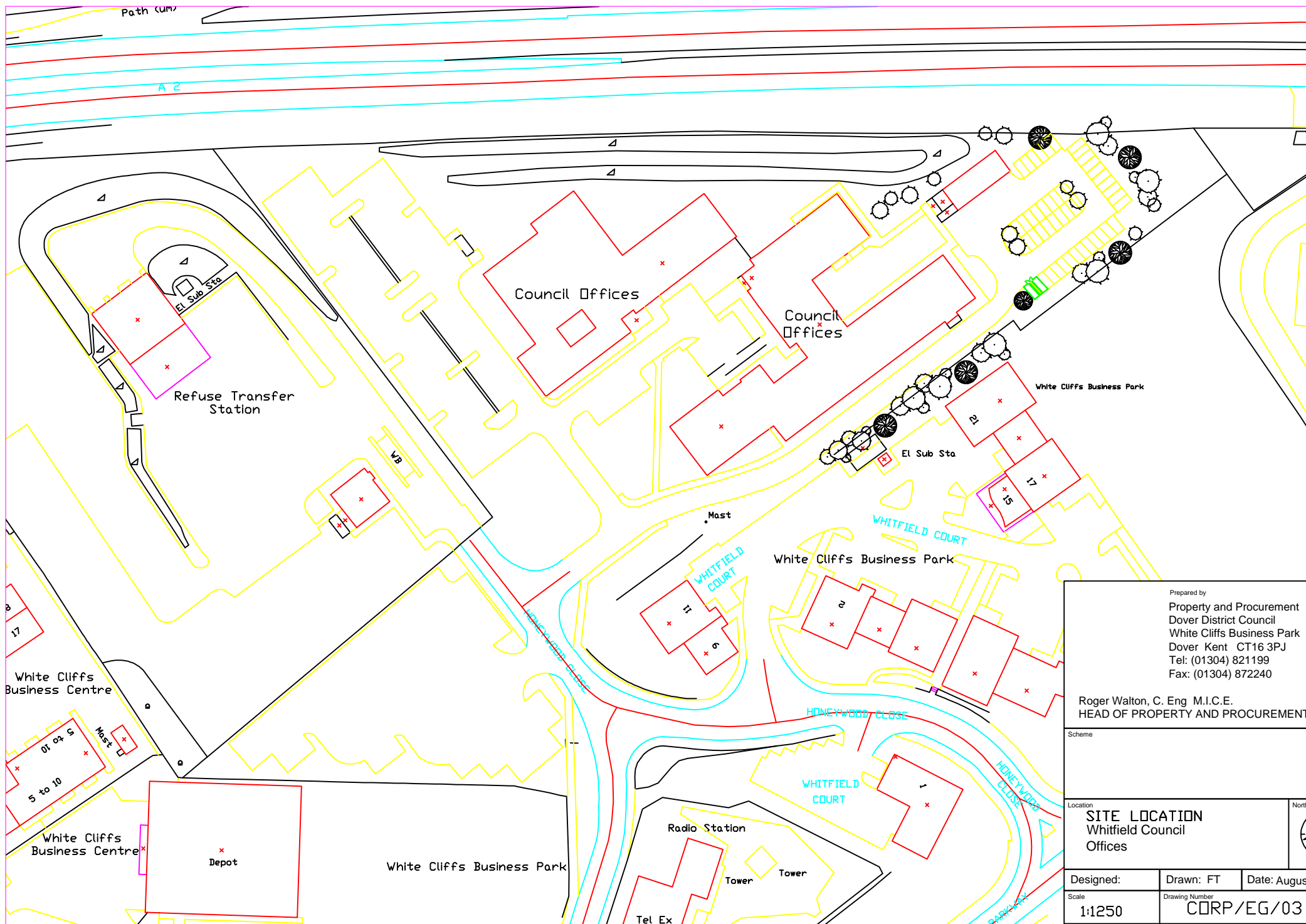
Clean insides to glazing on all main entrance doors

Bi Annually

Descale of all taps and outlets

Annually

Mechanical clean of vinyl and ceramic tiled floors using a mechanical appliance with a light brush action wet scrubber and vacuum.



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HEAD OF PROPERTY AND PROCUREMENT

Scheme

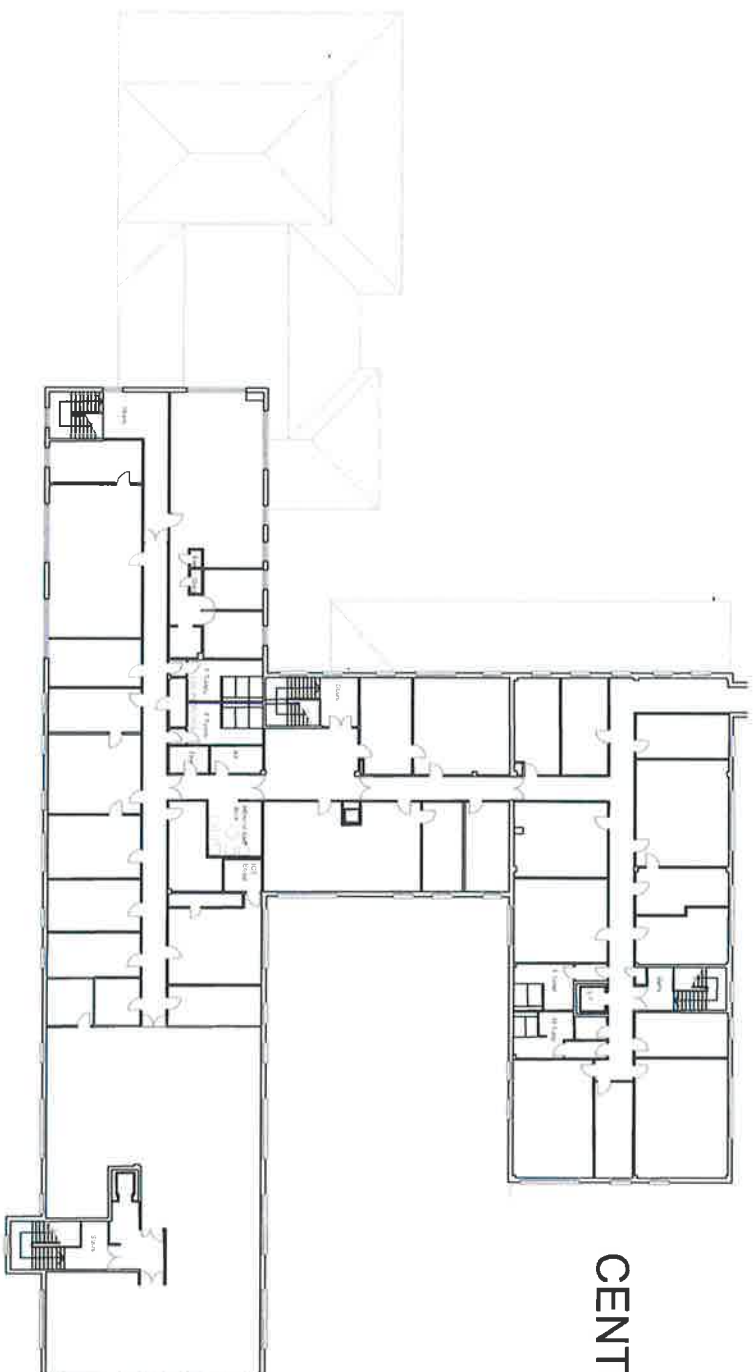
Location
SITE LOCATION
Whitfield Council
Offices

North



Designed:	Drawn: FT	Date: August
Scale 1:1250	Drawing Number CORP/EG/03	

APPENDIX C – FLOOR PLANS



CENTRAL WING

SOUTH WING



Prepared by
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Euring Roger Walton C. Eng. M.I.C.E.
Strategic Director (Operations & Commercial)

Schematic Drawing Title

DDC Whitefield Offices -
First Floor Plan (South and Central Wing)

Location

Whitefield, Dover



Designed: - Drawn: HTO Date: August 2020

Scale: NTS Drawing No: -

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Location Whitfield, Dover



Designed: -	Drawn: HTO	Date: August 2020
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NTS

Drawing Number:

Date: August 2020

SOUTH WING

CENTRAL WING

Garage

Lower
Car Park



DOVER
DISTRICT
COUNCIL

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DDC Whitfield Offices -
Basement Plan

Location
Whitfield, Dover



Designed: -	Drawn: HTO	Date: August 2020
Scale: NTS	Drawing Number: -	Rev: -

Visitor
Car Park

District Council
Council
Chamber

North Dover
Public Room
Brave
Room

SOUTH WING

CENTRAL WING

Garage

Lower
Car Park

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COUNCIL
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Editing Roger Watson, C Eng MICE
Strategic Director (Operations & Commercial)

Schematic Drawing Title

DDC Whitfield Offices -
Ground Floor Plan (South & Central Wing)

Location
Whitfield, Dover

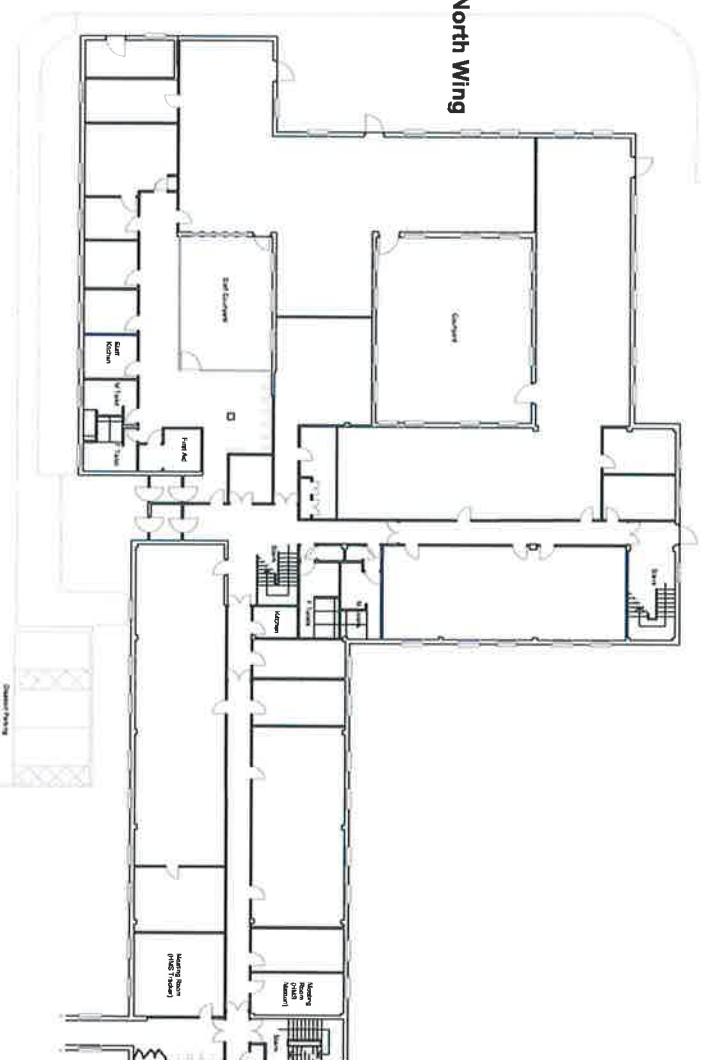


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Scale: NTS	Drawing Number:	Rev: -

Middle Car Park

NORTH WING

North Wing



Prepared by
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Serial Draw Title

DDC Whitfield Offices -
Ground Floor Plan (North Wing)

Location

Whitfield, Dover



Designed by - Drawn: HTO Date: August 2020

Scale: Drawing Number: NTS

DOVER DISTRICT COUNCIL

DEFAULT NOTICE

ADDRESS	TIME	DATE
Location	Description of Default	Work to be completed by

Reported by:

Received by Contractors Agent:

Date and Time Completed:

Returned to Council's Agent:

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Conditions of Contract

1. Definitions and Interpretation

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

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

Authorised Representatives: the persons respectively designated as such by the Authority and the Supplier.

Authority Assets: any materials, plant or equipment owned or held by the Authority and provided by the Authority to the Supplier for use in providing the service.

Authority's Premises: the premises identified in Appendix F which are to be made available for use by the Supplier for the provision of the Services on the terms set out in this agreement.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the KPIs, the term, the pricing structure and any other relevant factors.

Bribery Act: the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Charges: the charges which shall become due and payable by the Authority to the Supplier in respect of the Services in accordance with the provisions of this agreement.

Commencement Date: means 1 April 2022.

Confidential Information: means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:

- a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- b) any information developed by the parties in the course of carrying out this agreement;
- c) Personal Data;
- d) any Commercially Sensitive Information.

Contracts Finder: the government's publishing portal for public sector procurement opportunities.

Contract Year: any 12-month period starting on the Commencement Date and on each anniversary of the Commencement Date.

Controller: as defined in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended [and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party].

Data Subject: as defined in the Data Protection Legislation.

Default: any breach of the obligations of the relevant party (including abandonment of this agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence of statement:

- a) in the case of the Authority, of its employees, servants, agents;
- b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,

in connection with or in relation to this agreement and in respect of which such party is liable to the other.

Default Notice: as Appendix D.

Domestic Law: the law of the United Kingdom or a part of the United Kingdom.

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

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

Force Majeure: any circumstance not within a party's reasonable control including, without limitation:

- a) acts of God, flood, drought, earthquake or other natural disaster;
- b) epidemic or pandemic;
- c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d) nuclear, chemical or biological contamination or sonic boom;
- e) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;

- f) collapse of buildings, fire, explosion or accident; and
- g) any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Supplier's workforce or the workforce of any Subcontractor of the Supplier).

Health and Safety Policy: the health and safety policy of the Authority as provided to the Supplier on or before the Commencement Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

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

Initial Term: the period commencing on the Commencement Date and ending on the 3rd anniversary of the Commencement Date.

Insolvency Event: where:

- a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company 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 Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of 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 the Supplier (being a company, limited liability partnership or partnership) [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 a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company, partnership or limited liability partnership);
- e) the holder of a qualifying floating charge over the assets of the Supplier (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

- f) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- g) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of 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 Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive); [or]
- i) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business[; or]
- j) the Supplier (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: patents, utility models, rights to inventions, copyright and [neighbouring and] related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Key Personnel: those personnel identified for the roles attributed to such personnel.

Law: the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Supplier is bound to comply.

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

Personal Data: as defined in the Data Protection Legislation.

Processor: as defined in the Data Protection Legislation.

Prohibited Act: the following constitute Prohibited Acts:

- a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity;

- b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- c) committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) of 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 (c) above, if such activity, practice or conduct had been carried out in the UK.

Regulated Activity: in relation to children shall have the same meaning as set out in the Safeguarding Vulnerable Groups Act 2006

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Relevant Requirements: all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Remediation Notice: a notice served by the Authority.

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Supplier.

Replacement Supplier: any third party supplier of Replacement Services appointed by the Authority from time to time.

Representatives: means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisors.

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

Services: the services to be delivered by or on behalf of the Supplier under this agreement.

Supplier Party: the Supplier's agents and contractors, including each Sub-Contractor.

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

Supplier's Tender: the tender submitted by the Supplier and other associated documentation.

Sub-Contract: any contract or agreement, or proposed contract or agreement, between the Supplier and a third party pursuant to which that third party agrees to provide to the Supplier the Services or any part of the Services.

Sub-Contractor: the third parties that enter into a Sub-Contract with the Supplier.

Term: the period of the Initial Term as may be varied by:

- a) any Extension Period; or
- b) the earlier termination of this agreement in accordance with its terms.

Termination Date: the date of expiry or termination of this agreement.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S/2006/246).

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Working Day: Every day excluding Christmas Day.

Working Hours: the period from 7:00 am to 9:00pm on any Working Day.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time.
- 1.9 A reference to **writing** or **written** includes fax and e-mail.

- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to this agreement or to any other agreement or document is a reference to this agreement or such other agreement or document as varied from time to time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

Commencement and duration

2. Term

- 2.1 This agreement shall take effect on the Commencement Date and shall continue for the Term.

3. Extending the initial term

- 3.1 The Authority may extend this agreement beyond the Initial Term by a further period or periods of up to 2 years (each such extension together with any such extensions, being the "**Extension Period**"). If the Authority wishes to extend this agreement, it shall give the Supplier at least 3 months' written notice of such intention before the expiry of the Initial Term or Extension Period.
- 3.2 If the Authority gives such notice then the Term shall be extended by the period set out in the notice.
- 3.3 If the Authority does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 35 shall apply.

4. Due diligence and Supplier's warranty

- 4.1 The Supplier acknowledges and confirms that:
 - (a) the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant

for the performance of its obligations under this agreement;

- (b) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Authority.
- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement (including without limitation the suitability of Authority Premises); and
- (d) it has entered into this agreement in reliance on its own due diligence.

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

4.3 The Supplier:

- (a) warrants and represents that all information and statements made by the Supplier as a part of the procurement process, including without limitation the Supplier's Tender or response to any pre-qualification questionnaire (if applicable), remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the agreement; and
- (b) 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.

- 4.4 The Supplier shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Supplier, save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Authority and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 4.5 Nothing in this clause shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

The services

5. Supply of services

- 5.1 The Supplier shall provide the Services to the Authority with effect from the 1st April 2022 and for the duration of this agreement in accordance with the provisions of this agreement.
- 5.2 In the event that the Supplier does not comply with the provisions of clause 5.1 in any way, the Authority may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a **Default Notice**).

6. Service standards

Without prejudice, the Supplier shall provide the Services, or procure that they are provided:

- (a) with reasonable skill and care and in accordance with Best Industry Practice;
- (b) in accordance with all applicable Law.

7. Compliance

- 7.1 The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.

- 7.2 Where there is any conflict or inconsistency between the provisions of this agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Supplier has notified the Authority in writing.
- 7.3 The Supplier shall (and shall procure that the Supplier Personnel shall) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
 - (b) the Health and Safety Policy whilst at the Authority Premises.
- 7.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 7.5 Without limiting the general obligation set out in this clause , the Supplier shall (and shall procure that the Supplier Personnel shall):
- (a) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
 - (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) [the Authority's equality and diversity policy as provided to the Supplier from time to time;]
 - (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality law;
 - (b) [take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation)[; and]]

- (c) [at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.]

8. Authority's Premises and Assets

- 8.1 The Authority shall provide the Supplier (and its Sub-Contractors) with access to such parts of the Authority's Premises as the Supplier reasonably requires for the purposes only of providing the Services. The Supplier's right of access will terminate upon termination of this agreement.
- 8.2 The Authority shall provide the Supplier with such accommodation and facilities in the Authority's Premises or which is otherwise agreed by the parties from time to time.
- 8.3 In the event of the expiry or termination of the agreement, the Authority shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Authority's Premises to remove any of the Supplier's equipment. All such equipment shall be promptly removed by the Supplier.
- 8.4 The Supplier shall ensure that:
 - (a) where using the Authority's Premises and any Authority Assets they are kept properly secure and it will comply and cooperate with the Authority's security requirements from time to time regarding the security of the same;
 - (b) only those of the Supplier Personnel that are duly authorised to enter upon the Authority's Premises for the purposes of providing the Services, do so;
 - (c) any Authority Assets used by the Supplier are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from

Authority Premises unless expressly permitted under this agreement or by the Authority's Authorised Representative; and

- (d) any Authority Assets are used with all reasonable care and skill and in accordance with any manufacturer guidelines or instructions.

- 8.5 The Authority shall maintain and repair the Authority Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Supplier or its representatives (fair wear and tear excluded) the costs incurred by the Authority in maintaining and repairing the same shall be recoverable from the Supplier as a debt.
- 8.6 The Supplier shall notify the Authority immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Sub-Contractors to any property of the Authority, to any of the Authority's Premises or to any property of any other recipient of the Services in the course of providing the Services.

9. Basis of Tender and Price Fluctuation

- 9.1 The Contractor's priced Tender shall allow for any variations in the cost of labour, plant and materials which may take place in the first year of the Contract and for any additional costs that he will have to bear other than those referred to in Clause 9.6 (Tax Fluctuations) until the Price Fluctuations Clause comes into operation under the terms of the Contract. When the Price Fluctuations Clause is in operation variations in prices will be allowed and calculated annually commencing on 1 April 2023 and thereafter in each subsequent year.
- 9.2 The rates or prices contained in the Dayworks Rates, or Schedule shall be reviewed on each anniversary of the commencement date of the Contract (the "Review Date") and shall be increased or reduced by a percentage equivalent to the percentage increase or reduction (if any) shown by the All-In Tender Price Index since the commencement date and such increase or reduction shall take effect in respect of the twelve month period commencing on the relevant review date.
- 9.3 The BCIS All-In Tender Prices Index shall be utilised.
- 9.4 If the basis of the Index shall change, any official reconciliation between the two bases of computation published by the Central Statistical Office (or any other government department upon which duties in connection with the compilation and

maintenance of the Index shall have devolved) shall be binding upon the parties and shall be applied in adjusting the application of the Index hereto.

- 9.5 Tenderers should note that any price increases generated as a result of the application of the Price Fluctuation Clause referred to in the covering documentation will apply to the following:- Schedule, Defaults in Performance, Payments out of the Provisional Sums and Daywork Rates.

9.6 Tax Fluctuations

- 9.7 The rates and prices contained in the Tender documents shall take account of the levels and incidence at the date for return of Tenders (hereinafter called "the relevant date") of the taxes, levies and contributions (including national insurance contributions but excluding income tax and any levy payable under the Industrial Training Act 1982) which are by law payable to the Contractor in respect of his workforce. Any such matter is hereinafter called "a labour tax matter".

- 9.8 If after the relevant date there shall occur any of the events specified in 9.9 (below) of this Clause and as a consequence thereof the cost to the Contractor of performing his obligations under the Contract shall be increased or decreased then subject to the provisions of 9.10 of this Clause the net amount of such increase or decrease shall constitute an addition to or deduction from the sums otherwise payable to the Contractor under the Contract as the case may require.

- 9.9 The events referred to in the preceding Sub Clause are as follows:

- 9.10 (i) Any change in the level of any labour tax matter; and
- (ii) Any change in the incidence of any labour tax matter including the imposition of any new such matter or the abolition of any previously existing such matter.

- 9.11 In this Clause workforce means persons employed by the Contractor on manual labour whether skilled or unskilled but for the purpose of ascertaining what if any additions or deductions are to be paid or allowed under this Clause account shall not be taken of any labour tax matter in relation to any workpeople of the Contractor unless at the relevant time their normal course of employment is on the works defined in the Contract Area.

- 9.12 Subject to the provisions of the Contract as to the placing of Sub Contracts with Sub Contractors the Contractor may incorporate in any Sub Contract made for the purposes of performing his obligations under the Contract provisions which are mutatis mutandis the same as the provisions of this Clause and in such event

additions or deductions to be made in accordance with any such Sub Contract shall also be made under the Contract as if the increase or decrease of cost to the Sub Contractor had been directly incurred by the Contractor to his Sub-Contractor.

- 9.13 As soon as practicable after the occurrence of any of the events specified 9.9 (above) of this Clause the Contractor shall give the Supervising Officer written notice thereof. The Contractor shall keep such contemporary records as are necessary for the purpose of ascertaining the amount of any addition or deduction to be made in accordance with this Clause and shall permit the Supervising Officer to inspect such records. The Contractor shall submit to the Council with his monthly statements full details of every addition or deduction to be made in accordance with this Clause including all invoices for materials. All certificates for payment issued after submission of such details shall take due account of the additions or deductions to which such details relate. Provided that the Council may if the Contractor fails to submit full details of any deduction nevertheless take account of such deduction when issuing any certificates for payment.

10 Payment

- 10.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this agreement, the Authority shall pay the Charges to the Supplier.
- 10.2 Unless otherwise stated the Charges:
- (a) shall remain fixed during the Term; and
 - (b) is the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Supplier Personnel.
- 10.3 The Supplier shall invoice the Authority for payment of the Charges at the end of each calendar month. All invoices shall be directed to the Authority's Authorised Representative and shall contain such information as the Authority may inform the Supplier from time to time.
- 10.4 The Authority shall accept and process for payment an electronic invoice submitted by the Supplier, where it complies with the standard on electronic invoicing and is undisputed. For these purposes, an electronic invoice complies with the standard of electronic invoicing where it complies with the standard and any of the syntaxes published in the UK

version of Commission Implementing Decision (EU) 2017/1870 as it forms part of English law under the European Union (Withdrawal) Act 2018.

- 10.5 Where the Supplier submits an invoice to the Authority in accordance with clause 9.3, the Authority will consider and verify that invoice in a timely fashion.
- 10.6 The Authority shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 10.7 Where the Authority fails to comply with clause 9.5, and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 9.6 **10 days** after the date on which it is received by the Authority.
- 10.8 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- (c) provisions having the same effect as clause 9.5 to clause 9.7 of this agreement; and
 - (d) 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 9.5 to clause 9.7 of this agreement.

In this clause 9.8, "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.

- 10.9 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 21. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until **30** days after resolution of the dispute between the parties.
- 10.10 Subject to clause 9.9, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with clause 12. The Supplier shall not suspend the supply of the Services if any payment is overdue
- 10.11 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Supplier

shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.

- 10.12 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for **6 years** from the end of the Contract Year to which the records relate.
- 10.13 The Authority may at any time, set off any liability of the Supplier to the Authority against any liability of the Authority to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. Any exercise by the Authority of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.
- 10.14 All amounts due under this agreement from the Supplier to the Authority shall be paid in full without any set-off, counterclaim, deduction or withholding (other than deduction or withholding tax as required by law).

11. Interest

- 11.1 Each party shall pay interest on any sum due under this agreement, calculated as follows:
- (e) Rate. 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
 - (f) Period. From when the overdue sum became due, until it is paid.

Staff

12. Key personnel

- 12.1 Each party shall appoint the persons named as such in Schedule 1 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.

12.2 The Supplier shall not remove or replace any of the Key Personnel unless:

- (g) requested to do so by the Authority;
- (h) the person is on long-term sick leave;
- (i) the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
- (j) the person resigns from their employment with the Supplier; or
- (k) the Supplier obtains the prior written consent of the Authority.

12.3 The Supplier shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within 30 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

12.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 28 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Authority becoming aware of the role becoming vacant.

12.5 The Authority may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.

12.6 If the Supplier replaces the Key Personnel as a consequence of this clause, the cost of effecting such replacement shall be borne by the Supplier.

13 Other personnel used to provide the services

13.6 At all times, the Supplier shall ensure that:

- (a) each of the Supplier Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

- (b) there is an adequate number of Supplier Personnel to provide the Services properly;
- (c) only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
- (d) all of the Supplier Personnel comply with all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority's Premises.

- 13.7 The Authority may refuse to grant access to, and remove, any of the Supplier Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 13.8 The Supplier shall replace any of the Supplier Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 13.9 The Supplier shall maintain up-to-date personnel records on the Supplier Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests on the Supplier Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 13.10 [The Supplier shall use its reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.]

14. Safeguarding children and vulnerable adults

- 14.1 The parties acknowledge that the Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.]
- 14.2 [The Supplier shall:

- (a) monitor the level and validity of the checks for each member of staff
- (b) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

14.3 The Supplier warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Supplier 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.

14.4 The Supplier shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this 16 have been met.

15. TUPE

The parties agree that statutory provisions shall apply to any Relevant Transfer of staff under this agreement.

Contract management

16. Reporting and meetings

16.1 The Supplier shall provide the Management Reports at monthly intervals 72 hours prior to Progress and Valuation Meeting.

16.2 The Authorised Representatives and relevant Key Personnel shall meet on a monthly basis and the Supplier shall, at each meeting, present its previously circulated Management Reports.

17. Monitoring

17.1 The Authority may monitor the performance of the Services by the Supplier.

- 17.2 The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring at no additional charge to the Authority.

18. Dispute resolution

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

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

- 18.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute.

19. Sub-Contracting and assignment

- 19.1 Neither party shall assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Supplier sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority, such consent not to be unreasonably withheld.
- 19.2 In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:
- (a) remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
 - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
 - (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.
- 19.3 The Authority shall be entitled to novate (and the Supplier shall be deemed to consent to any such novation) the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

Liability

20. Indemnities

- 20.1 The Supplier shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses incurred by the Authority arising out of or in connection with:

- (a) the Supplier's breach or negligent performance or non-performance of this agreement;
- (b) any claim made against the Authority arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier or Supplier Personnel;
- (c) the enforcement of this agreement.

20.2 The indemnity shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Authority are directly caused (or directly arise) from the negligence or breach of this agreement by the Authority or its Representatives.

21. Limitation of liability

21.1 Neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement.

21.2 Notwithstanding the provisions of clause 21.1, but subject to **Error! Bookmark not defined.**21.4, the Supplier assumes responsibility for and acknowledges that the Authority may, amongst other things, recover:

- (a) sums paid by the Authority to the Supplier pursuant to this agreement, in respect of any services not provided in accordance with the agreement;
- (b) wasted expenditure;
- (c) additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
- (d) losses incurred by the Authority arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third

party (including any Subcontract, Supplier Personnel, regulator or customer of the Authority) against the Authority caused by the act or omission of the Supplier;

(e) any anticipated savings.

21.3 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this agreement, including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this agreement.

21.4 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);
- (c) breach of any obligation as to title implied by statute; or
- (d) any other liability for which may not be limited under any applicable law.

22. Insurance

22.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance as set out in the ITT Instruction Document attached with these Conditions.

22.2 The Supplier shall give the Authority, on request, copies of all insurance policies 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.

22.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

22.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.

- 22.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

Information

23. Freedom of information

- 23.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

- 23.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

23.3 Notwithstanding any other term of this agreement, the Supplier consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.

23.4 The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this agreement.

24. Confidentiality

24.1 Each party shall keep the other party's Confidential Information confidential and shall not:

- (a) use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted.

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

- (a) which the other party confirms in writing is not required to be treated as Confidential Information;
- (b) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
- (c) which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law, including the FOIA or the EIRs;
- (d) which is in or enters the public domain other than through any disclosure prohibited by this agreement;

- (e) which a party can demonstrate was lawfully in its possession prior to receipt from the other party; or
- (f) which is disclosed by the Authority on a confidential basis to any central government or regulatory body.

24.3 A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this agreement, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,
- (c) and at all times, it is liable for the failure of any Representatives to comply with the above obligations.
- (d) The provisions of this clause shall survive for a period of 12 years from the Termination Date.

25. Audit

25.1 During the Term and for a period of 6 years after the Termination Date, the Authority (acting by itself or through its Representatives) may conduct an audit of the Supplier, including for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services.
- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;

- (c) to review the Supplier's compliance with the Data Protection Legislation, the FOIA, Data Protection and Freedom of Information and any other legislation applicable to the Services;
- (d) to review any records created during the provision of the Services;
- (e) to review any books of account kept by the Supplier in connection with the provision of the Services;
- (f) to carry out the audit and certification of the Authority's accounts;
- (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.

25.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this agreement, the Authority may not conduct an audit more than twice in any calendar year.

25.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

25.4 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information requested by the above persons within the permitted scope of the audit;
- (b) reasonable access to any sites and to any equipment used (whether exclusively

or non-exclusively) in the performance of the Services; and

(c) access to the Supplier Personnel.

25.5 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.

25.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.

25.7 If an audit identifies that:

(a) the Supplier has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;

(b) the Authority has overpaid any Charges, the Supplier shall pay to the Authority the amount overpaid within 20 days. The Authority may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and

(c) the Authority has underpaid any Charges, the Authority shall pay to the Supplier the amount of the underpayment less the cost of audit incurred by the Authority if this was due to a default by the Supplier in relation to invoicing within 20 days.

26. Intellectual property

26.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property Rights created by the Supplier or Supplier Personnel:

- (a) in the course of performing the Services;
or
- (b) exclusively for the purpose of performing the Services,

shall vest in the Authority on creation.

26.2 The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

Termination

27. Termination for breach

27.1 The Authority may terminate this agreement in whole or part with immediate effect by the service of written notice on the Supplier in the following circumstances:

- (a) if the Supplier is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause if the Supplier has failed to remedy such breach within 28 days of receipt of notice from the Authority (a **Remediation Notice**) to do so;
- (b) if a Consistent Failure has occurred;
- (c) if there is an Insolvency Event.
- (d) if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010.
- (e) the Authority reasonably believes that the circumstances set out in regulation 73(1)

of the Public Contracts Regulations 2015 apply.

27.2 If this agreement is terminated by the Authority pursuant to this clause , such termination shall be at no loss or cost to the Authority and the Supplier hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination.

27.3 The Supplier may terminate this agreement in the event that the Authority commits a Termination Payment Default by giving 30 days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the 30 day notice period, the Supplier's notice to terminate this agreement shall be deemed to have been withdrawn.

28. Termination on notice

Without affecting any other right or remedy available to it, the Authority may terminate this agreement at any time by giving 2 months' written notice to the Supplier.

29. Force majeure

29.1 Provided it has complied with the remaining provisions of this Clause , if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations.

29.2 The corresponding obligations of the other party will be suspended to the same extent as those of the Affected Party.

29.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event but not later than 3 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event.

- 29.4 An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event. The Supplier cannot claim relief if the Force Majeure Event is one which, in accordance with Best Industry Practice, the Supplier should have foreseen and provided for the cause in question.
- 29.5 The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 29.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 2 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 4 weeks' notice to the Affected Party.

30. Prevention of bribery

- 30.1 The Supplier represents and warrants that neither it, nor any Supplier Personnel:
- (a) has committed a Prohibited Act;
 - (b) to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
 - (c) has 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.
- 30.2 The Supplier shall promptly notify the Authority if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out at the relevant time.
- 30.3 The Supplier shall (and shall procure that its Supplier Personnel shall) during the Term:
- (a) not commit a Prohibited Act; and/or

- (b) not do or omit to do anything that would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
 - (c) have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent occurrence of a Prohibited Act];
 - (d) notify the Authority (in writing) if it becomes aware of any breach of the above clause , or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this agreement.
- 30.4 The Supplier shall maintain appropriate and up to date records showing all payments made by the Supplier in connection with this agreement and the steps taken to comply with its obligations.
- 30.5 The Supplier shall allow the Authority and its third party representatives to audit any of the Supplier's records and any other relevant documentation.
- 30.6 If the Supplier is in Default under this clause the Authority may by notice:
 - (a) require the Supplier to remove from performance of this agreement any Supplier Personnel whose acts or omissions have caused the Default; or
 - (b) immediately terminate this agreement.
- 30.7 Any notice served by the Authority 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).

31. Consequences of termination or expiry

- 31.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason, the provisions of the Exit Management Plan shall come into effect and the Supplier shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Supplier.
- 31.2 On termination or expiry of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) the Supplier shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the Supplier Authorised Representative or Chief Executive Officer shall certify full compliance with this clause.
- 31.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry shall remain in full force and effect.
- 31.4 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

General provisions

32. Non-solicitation

In order to protect each other's legitimate business interest, neither party shall (except with the prior written consent of the other) during the term of this agreement, and for a period of one year thereafter, solicit or attempt to solicit or entice away any senior staff of the other party who have been engaged or employed in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

33. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

34. Rights and remedies

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

35. Severability

- 35.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 35.2 If any provision or part-provision of this agreement is deemed deleted, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

36. Partnership or agency

- 36.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 36.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

37. Third party rights

- 37.1 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 37.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

38. Publicity

The Supplier shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the Authority's name or logo in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

39. Notices

39.1 Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to Asset.Management@doover.gov.uk

39.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; or
- (c) if sent by email at the time of transmission, or if this time falls outside working hours in the place of receipt, when working hours resume. In this clause , working hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

39.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

40. Entire agreement

40.1 This agreement and the documents referred to in it and all other documentation as attached in the Kent Business Portal constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

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

41. Counterparts

This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original of this agreement, but all the counterparts shall together constitute the one agreement.

42. Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

43. Jurisdiction

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

Schedule 1 Contract management

1. Authorised representatives

- 1.1 The Authority's initial Authorised Representative: Foronda Smith, Dover District Council
- 1.2 The Supplier's initial Authorised Representative: To Be Confirmed

2. Key personnel

Contractor to Confirm

3. Meetings

- 3.1 Type: - Contract Progress and Valuation
- 3.2 Frequency: - Monthly (unless otherwise advised)
- 3.3 Agenda: - To be circulated 72hrs prior to scheduled meeting

4. Reports

- 4.1 Type: - Progress Reporting, Valuation and Any Outstanding Items
- 4.2 Contents: - As above
- 4.3 Frequency: - Monthly (Unless otherwise Requested)
- 4.4 Circulation list: - Authorised Contact List

Schedule 2 [Insurance]

[INSERT DETAILS OF REQUIRED INSURANCE]

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