

Dated

19 May

2022

**ISLE OF WIGHT COUNCIL  
and  
SWEETSPOT GROUP LIMITED**

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**AGREEMENT**

RELATING TO THE SOURCING OF SPONSORSHIP MONIES FOR CYCLING EVENTS,  
INCLUDING THE FINAL STAGE OF THE TOUR OF BRITAIN 2022

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This agreement is made as a deed on the day of 19 May 2022

BETWEEN

- (1) **ISLE OF WIGHT COUNCIL** of County Hall, High Street, Newport, Isle of Wight, PO30 1UD (the '**Authority**'); and
- (2) **SWEETSPOT GROUP LIMITED** incorporated and registered in England and Wales with company number 04572912 whose registered office address is at Belgrave House, 39-43 Monument Hill, Weybridge, KT13 8RN (the '**Supplier**')

## BACKGROUND

- (A) The Authority sought proposals for the sourcing of sponsorship for cycling events, including the Tour of Britain stage to be held on the Isle of Wight in September 2022 by means of a public tender exercise.
- (B) The Authority has, through a competitive process, selected the Supplier to provide these services and the Supplier is willing and able to provide the services in accordance with the terms and conditions of this agreement.

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

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

**'Achieved KPIs'**; in respect of any Service in any measurement period, the standard of performance actually achieved by the Supplier in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in *Schedule 2 (Contract Management and Performance Regime)*).

**'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, the first such persons being set out in *Schedule 2 (Contract Management and Performance Regime)*.

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

**'Business Continuity Plan'**; a plan which sets out the procedures to be adopted by the Supplier to ensure business continuity in the event there is a disruption to service delivery (including procedures to be taken by the Supplier in planning and providing for any such event) and in accordance with *Clause 9 (Business Continuity)*.

**'Catastrophic Failure'**;

- (a) a failure by the Supplier for whatever reason to implement the Business Continuity Plan successfully and in accordance with its terms on the occurrence of a disruption to service delivery.
- (b) any action by the Supplier, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Authority's Authorised Representative has or may cause significant harm to the reputation of the Authority.

**'Change'**; any change to this agreement including to any of the Services.

**'Change Control Note'**; the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

**'Change Control Procedure'**; the procedure for changing this agreement, as set out in *Schedule 6 (Change Control)*.

**'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, as such charges are set out in *Schedule 4 (Charges and Payment)*.

**'Commencement Date'**; shall be 8<sup>th</sup> November 2021.

**'Commercially Sensitive Information'**; shall be information identified in the tender documentation as being commercially sensitive and specifically being the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.

**'Consistent Failure'**; shall have the meaning set out in *Part 3 of Schedule 2 (Contract Management and Performance Regime)*.

**'Contract Year'**; a period of twelve (12) months, commencing on the Commencement Date.

**'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 (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.

**'Default Notice'**; is defined in *Clause 5.2 (Supply of Services)*.

**'Dispute Resolution Procedure'**; the procedure set out in *Clause 19 (Dispute Resolution)*.

**'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.

**'Exit Plan'**; the plan set out in *Schedule 7 (Exit)*.

**'Extension Period'**; shall have the meaning given to it in *Clause 3.1 (Extending the Initial Term)*.

**'Financial Reports'**; the reports to be prepared and presented by the Supplier in accordance with *Clause 15 (Reporting and Meetings)* and *Schedule 2 (Contract Management and Performance Regime)*.

**'FOIA'**; the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, 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 cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain.

**'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 19<sup>th</sup> September 2022.

**'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 if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Supplier (being a company) 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) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- (h) 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 fourteen (14) days;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive); or
- (j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (k) 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'**; any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility

models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

**'Key Personnel'**; those personnel identified in *Schedule 2 (Contract Management and Performance Regime)* for the roles, attributed to such personnel, as modified pursuant to *Clause 11 (Key Personnel)*.

**'KPIs'**; the key performance indicators set out in *Schedule 2 (Contract Management and Performance Regime)*.

**'Law'**; the laws of England and Wales and the European Union 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 must comply.

**'Management Reports'**; the reports to be prepared and presented by the Supplier in accordance with *Clause 15 (Reporting and meetings)* and *Schedule 2 (Contract Management and Performance Regime)* to include a comparison of Achieved KPIs with the Target KPIs in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPIs.

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

**'Payment Plan'**; the plan for payment of the Charges as set out in *Schedule 4 (Charges and Payment)*.

**'Personal Data'**; has the meaning given to it 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 to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this 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 *Clause (c)*, 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 Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to 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 Transfer'**; a relevant transfer for the purposes of TUPE.

**'Remediation Notice'**; a notice served by the Authority in accordance with *Clause 29.1.1 (Termination for breach)*.

**'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, 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.

**'Service Failure'**; a failure by the Supplier to provide the Services in accordance with any KPI or this agreement.

**'Services'**; the services to be delivered by or on behalf of the Supplier under this agreement, as more particularly described in *Schedule 1 (Specification)*.

**'Sub-Contract'**; any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

**'Sub-Contractor'**; the contractors or supplier's that enter into a Sub-Contract with the Supplier.

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

**'Supplier's 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 as set out in *Schedule 3 (Supplier's Tender)*.

**'Target KPI'**; the minimum level of performance for a KPI which is required by the Authority as set out against the relevant KPI in *Schedule 2 (Contract Management and Performance Regime)*.

**'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 (SI 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'**; Monday to Friday, excluding any public holidays in England and Wales.

- 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) and that person's legal and personal representatives, successors and permitted assigns.
- 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 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes faxes but not 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 a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 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.
- 1.14 If there is any conflict or inconsistency between the provisions in the main body of this agreement and the schedules, such conflict or inconsistency shall be resolved according to the following order of priority:
  - 1.14.1 the clauses of the agreement;
  - 1.14.2 *Schedule 1 (Specification)* to this agreement;
  - 1.14.3 the remaining schedules to this agreement other than *Schedule 3 (Supplier's Tender)*;
  - 1.14.4 *Schedule 3 (Supplier's Tender)* to this agreement.

## **COMMENCEMENT AND DURATION**

### **2. TERM**

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 two (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 one (1) 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 without the need for formal notice to be given and the provisions of *Clause 34 (Consequences of termination or expiry)* shall apply.

### **4. DUE DILIGENCE AND SUPPLIER'S WARRANTY**

- 4.1 The Supplier acknowledges and confirms that:

- 4.1.1 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;
  - 4.1.2 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority pursuant to *Clause 4.1.1*;
  - 4.1.3 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; and
  - 4.1.4 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:
- 4.3.1 warrants and represents that all information 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
  - 4.3.2 shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.
- 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 in accordance with *Clause 4.3.2* 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 4* 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 Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement, including without limitation *Schedule 1 (Specification)* and *Schedule 2 (Contract Management and Performance Regime)*.
- 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**').
- 5.3 Notwithstanding the provision of *Clause 5.2* if the Supplier shall at any time fail to carry out any part of the Services in accordance with the provisions of *clause 5.1* then without prejudice to any other right or remedy which the Authority may possess in respect of such failure, the Authority may:
- 5.3.1 require the Supplier to remedy such default within such time as may be specified by the Authority by providing or providing again (as the case may be) without further charges to the Authority such part of the Services to the required standard; and/or
  - 5.3.2 without determining the agreement in whole or in part, itself provide or procure the provision of such part of the Services until such time as the Supplier shall have proved to the reasonable satisfaction of the Authority that such part of the Services will once more be provided by the Supplier to the required standard or, at the Authority's option until such later time as the Authority may specify as being reasonable notice in all the circumstances that the Supplier will once more so provide such part of the Services; and
  - 5.3.3 without determining the whole of the agreement, determine the agreement in respect of such part of the Services only and thereafter itself provide or procure the provision of such part of the Services
- 5.4 The Authority may charge the cost of any services provided or procured by it under *Clause 5.3* together with the Authority's reasonable costs incurred in administering the provision or procurement of such services ('**Administration Charge**') up to a maximum of ten percent (10%) of the cost of such Services, to the Supplier.

## **6. KPI'S**

- 6.1 Where any Service is stated in *Schedule 2 (Contract Management and Performance Regime)* to be subject to a specific KPI, the Supplier shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service delivered is equal to or higher than the corresponding Target KPI to such specific KPI.
- 6.2 If the existing Services are varied or new Services are added, Target KPIs for the same will be determined and included within *Schedule 2 (Contract Management and Performance Regime)*.
- 6.3 The Supplier shall provide records of and Management Reports summarising the Achieved KPIs as provided for in *Clause 15 (Reporting and meetings)*.

## **7. SERVICE STANDARDS**

- 7.1 Without prejudice to *Clause 6 (KPIs)*, the Supplier shall provide the Services, or procure that they are provided:
  - 7.1.1 with reasonable skill and care and in accordance with the best practice prevailing in the industry from time to time;
  - 7.1.2 in all respects in accordance with the Authority's policies set out in *Schedule 1*; and
  - 7.1.3 in accordance with all applicable Law.

## **8. COMPLIANCE**

- 8.1 The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 8.2 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.
- 8.3 The Supplier shall (and shall procure that the Supplier's Personnel shall) perform its obligations under this agreement (including those in relation to the Services) in accordance with all applicable Law regarding health and safety.
- 8.4 Each party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards 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's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

8.5 Without limiting the general obligation set out in *Clause 7.1 (Service standards)*, the Supplier shall (and shall procure that the Supplier's Personnel shall):

8.5.1 perform its obligations under this agreement (including those in relation to the Services) in accordance with:

(a) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

(b) the Authority's equality and diversity policy as provided to the Supplier from time to time;

(c) 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; and,

8.5.2 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

8.5.3 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.

8.6 The Supplier must ensure that all of its employees, officers, agents and contractors are paid at least the National Living Wage or where appropriate the National Minimum Wage, as legislatively applicable at the time of delivery of services.

## **9. BUSINESS CONTINUITY**

9.1 The Supplier shall comply at all times with the relevant provisions of the Business Continuity Plan.

9.2 Following the disruption of the Services, the Supplier shall:

9.2.1 implement the Business Continuity Plan;

9.2.2 continue to provide the affected Services to the Authority in accordance with the Business Continuity Plan; and

9.2.3 restore the affected Services to normal within the period laid out in the Business Continuity Plan

To the extent that the Supplier complies fully with the provisions of this *Clause 9* (and the reason for the disruption to the Services was not a breach of any of the other terms of this agreement on the part of the Supplier), the KPIs to which the affected Services

are to be provided during the continuation of the disruption to the Services shall not be the KPIs as referred to in *Clause 6 (KPIs)* but shall be the KPIs set out in the Business Continuity Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

## **CHARGES AND 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 in accordance with the Payment Plan.
- 10.2 Unless otherwise stated in *Schedule 4 (Charges and Payment)*, the Charges:
- 11.2.1 shall remain fixed during the Term; and
  - 11.2.2 is the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, suppliers and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Supplier's Personnel.
- 10.3 The Supplier shall invoice the Authority for payment of the Charges at the time the Charges are expressed to be payable in accordance with the Payment Plan. 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 Where the Supplier submits an invoice to the Authority in accordance with *Clause 10.2*, the Authority will consider and verify that invoice within ten (10) Working Days.
- 10.5 The Authority shall pay the Supplier any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed.
- 10.6 Where the Authority fails to comply with *Clause 10.4*, 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 10.5* ten (10) Working Days after the date on which it is received by the Authority.
- 10.7 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- 10.7.1 provisions having the same effect as *Clause 10.4* to *Clause 10.6* of this agreement; and
  - 10.7.2 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 10.4* to *Clause 10.6* of this agreement.



In this *Clause 10.7*, '**Sub-Contract**' means a contract between two (2) 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.

- 10.8 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 20 (Dispute Resolution)*. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of twenty eight (28) days after resolution of the dispute between the parties.
- 10.9 Subject to *Clause 10.8*, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Supplier shall not suspend the supply of the Services if any payment is overdue.
- 10.10 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.
- 10.11 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 six (6) years from the end of the Contract Year to which the records relate.
- 10.12 The Authority may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this agreement or any other agreement pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to the Authority.
- 10.13 The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

## STAFF

### 11. KEY PERSONNEL

- 11.1 Each party shall appoint the persons named as such in *Schedule 2 (Contract Management and Performance Regime)* 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.
- 11.2 The Supplier shall not remove or replace any of the Key Personnel unless:
- 11.2.1 requested to do so by the Authority;
  - 11.2.2 the person is on long-term sick leave;
  - 11.2.3 the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
  - 11.2.4 the person resigns from their employment with the Supplier; or
  - 11.2.5 the Supplier obtains the prior written consent of the Authority.
- 11.3 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 ten (10) 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.
- 11.4 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 twenty (20) 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.
- 11.5 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.
- 11.6 If the Supplier replaces the Key Personnel as a consequence of this *Clause 11*, the cost of effecting such replacement shall be borne by the Supplier.

## **12. OTHER PERSONNEL USED TO PROVIDE THE SERVICES**

- 12.1 At all times, the Supplier shall ensure that:
- 12.1.1 each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
  - 12.1.2 there is an adequate number of Supplier's Personnel to provide the Services properly;
  - 12.1.3 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
  - 12.1.4 all of the Supplier's Personnel comply with all of the Authority's policies.
- 12.2 The Authority may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 12.3 The Supplier shall replace any of the Supplier's 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's 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.
- 12.4 The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests on the Supplier's 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.
- 12.5 The Supplier shall use its best 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 as the prevailing industry norm for similar services, locations and environments.

## **13. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

- 13.1 The parties acknowledge that where the Services being delivered under this agreement require the same, the Supplier 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.
- 13.2 The Supplier shall adopt Safeguarding Policies and such policies shall comply with the Authority's safeguarding policy as amended from time to time.
- 13.3 The Supplier shall:

- 13.3.1 ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service ('DBS'); and
  - 13.3.2 monitor the level and validity of the checks under this *Clause 13.3* for each member of staff;
  - 13.3.3 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.
- 13.4 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.
- 13.5 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 *Clause 13* have been met.
- 13.6 The Supplier shall refer information about any person carrying out the Services to the DBS where it removes 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 the service users or children or vulnerable adults.

#### **14. TUPE**

The parties agree that the provisions of *Schedule 8 (TUPE)* shall apply to any Relevant Transfer of staff under this agreement.

### **CONTRACT MANAGEMENT**

#### **15. REPORTING AND MEETINGS**

- 15.1 The Supplier shall provide the management reports in the form and at the intervals set out in *Schedule 2 (Contract Management and Performance Regime)*.
- 15.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in *Schedule 2 (Contract Management and Performance Regime)* and the Supplier shall, at each meeting, present its previously circulated Management Reports and Financial Reports in the format set out in that Schedule.

#### **16. MONITORING**

- 16.1 The Authority will monitor the performance of the Services by the Supplier.

16.2 The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in *Clause 16.1* at no additional charge to the Authority.

## **17. ACCOUNTING PROCEDURES AND RECORDS**

17.1 The Supplier shall establish in relation to this agreement suitable accounting procedures for the setting up and maintenance of accounting records and financial management and produce audited/verified accounts as required by the Authority.

17.2 The Supplier shall compile and maintain such information as the Authority may reasonably require so that the Authority is able to monitor and evaluate the provision and performance of the Services and the application of the Charges.

17.3 The Supplier will provide to the Authority a copy of its audited final accounts as soon as they are available during a Contract Year.

17.4 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 six (6) years from the end of the Contract Year to which the records relate.

## **18. CHANGE CONTROL AND CONTINUOUS IMPROVEMENT**

18.1 Any requirement for a Change shall be subject to the Change Control Procedure.

18.2 The Supplier must, to the extent reasonably practicable, co-operate and assist the Authority in fulfilling its Best Value Duty.

18.3 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Authority's Authorised Representative quarterly in the first Contract Year and once every six months for the remainder of the Term on:

18.3.1 the emergence of new and evolving relevant technologies which could improve the Services;

18.3.2 new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;

18.3.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and

18.3.4 changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Authority.

18.4 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with *Clause 18.3* shall be addressed by the parties using the Change Control Procedure.

## **19. DISPUTE RESOLUTION**

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

19.1.1 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;

19.1.2 if the Authorised Representatives are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to the Authority's Director of Neighbourhoods and the Supplier's CEO who shall attempt in good faith to resolve it; and

19.1.3 if the Authority's Director of Neighbourhoods and the Supplier's CEO are for any reason unable to resolve the Dispute within thirty (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 Solve. 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 Solve. The mediation will start not later than sixty (60) days after the date of the ADR Notice.

19.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under *Clause 43 (Governing Law)* which clause shall apply at all times.

## **20. SUB-CONTRACTING AND ASSIGNMENT**

20.1 Subject to *Clause 20.3*, neither party shall assign, novate 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.

20.2 In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:

- 20.2.1 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;
  - 20.2.2 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
  - 20.2.3 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.
- 20.3 The Authority shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.
- 20.4 Provided that the Authority has given prior written consent, the Supplier shall be entitled to novate the agreement where:
- 20.4.1 the specific change in contractor was provided for in the procurement process for the award of this agreement;
  - 20.4.2 there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

## **LIABILITY**

### **21. INDEMNITIES**

- 21.1 Subject to *Clause 21.2*, 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:
- 21.1.1 the Supplier's breach or negligent performance or non-performance of this agreement;
  - 21.1.2 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;
  - 21.1.3 the enforcement of this agreement.
- 21.2 The indemnity under *Clause 21.1* 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.

## **22. LIMITATION OF LIABILITY**

- 22.1 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.
- 22.2 Notwithstanding the provisions of *Clause 22.1*, but subject to *Clause 22.4*, the Supplier assumes responsibility for and acknowledges that the Authority may, amongst other things, recover:
- 22.2.1 sums paid by the Authority to the Supplier pursuant to this agreement, in respect of any services not provided in accordance with the agreement;
  - 22.2.2 wasted expenditure;
  - 22.2.3 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;
  - 22.2.4 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 Sub-Contract, Supplier's Personnel, regulator or customer of the Authority) against the Authority caused by the act or omission of the Supplier;
  - 22.2.5 any anticipated savings.
- 22.3 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.
- 22.4 Subject to *Clause 22.1* and *Clause 22.6*, the Supplier's aggregate liability:
- 22.4.1 is unlimited in respect of:
    - (a) the indemnities in *Schedule 8 (TUPE)*;
    - (b) the indemnities in *Clause 28.2 (Intellectual Property)*;
    - (c) any breach of *Clause 32 (Prevention of bribery)*;
    - (d) any breach of *Clause 33 (Compliance with Anti-Slavery and Human Trafficking Laws)*;
    - (e) any claim or action in respect of corporate manslaughter;
    - (f) the Supplier's wilful default.



22.4.2 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement, shall in no event exceed £340,000 in each Contract Year.

22.5 Subject to *Clause 22.1* and *Clause 22.6*, the Authority's aggregate liability to the Supplier for all claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable), shall be limited in any Contract Year to the total Charges that are properly due and payable in the relevant Contract Year.

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

22.6.1 fraud or fraudulent misrepresentation;

22.6.2 death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);

22.6.3 breach of any obligation as to title implied by statute; or

22.6.4 any other liability for which may not be limited under any applicable Law.

## 23. INSURANCE

23.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

23.1.1 public liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims;

23.1.2 employer's liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims;

23.1.3 professional indemnity insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;

(the '**Required Insurances**') The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

- 23.2 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 23.3 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.
- 23.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.
- 23.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six (6) years following the expiration or earlier termination of the agreement.

## **INFORMATION**

### **24. FREEDOM OF INFORMATION**

- 24.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 24.1.1 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;
  - 24.1.2 transfer to the Authority all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - 24.1.3 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 five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - 24.1.4 not respond directly to a Request For Information unless authorised in writing to do so by the Authority.
- 24.2 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 Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 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.

24.3 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.

24.4 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.

## **25. DATA PROTECTION**

25.1 Both parties will comply with all applicable requirements of and all their obligations under the Data Protection Legislation which arise in connection with the agreement.

25.2 Given the nature of this agreement and the Services, the parties do not envisage that either party will process any Personal Data for or on behalf of the other party, under or in connection with this agreement or the Services. Where and to the extent that in undertaking the obligations set out in this agreement or performing the Services, either party anticipates that the other will process any Personal Data for and on behalf of the other party it shall notify the other party and the parties shall agree a variation to this agreement to incorporate appropriate provisions in accordance with Article 28 of the UK GDPR or as otherwise required by the Data Protection Legislation.

## **26. CONFIDENTIALITY**

26.1 Subject to *Clause 26.2*, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

26.2 *Clause 26.1* shall not apply to any disclosure of information:

26.2.1 required by any applicable Law, provided that *Clause 24.2 (Freedom of Information)* shall apply to any disclosures required under the FOIA or the EIRs;

26.2.2 that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;

26.2.3 where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of *Clause 26.1*;

- 26.2.4 by the Authority of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;
  - 26.2.5 to enable a determination to be made under *Clause 19 (Dispute Resolution)*;
  - 26.2.6 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
  - 26.2.7 by the Authority to any other department, office or agency of the Government; and
  - 26.2.8 by the Authority relating to this agreement and in respect of which the Supplier has given its prior written consent to disclosure.
- 26.3 On or before the Termination Date the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authority's employees, rate-payers or service users, are delivered up to the Authority or securely destroyed, as directed by the Authority.

## **27. AUDIT**

- 27.1 During the Term and for a period of six (6) years after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:
- 27.1.1 to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all Supplier (including Sub-Contractors) of the Services;
  - 27.1.2 to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
  - 27.1.3 to review the Supplier's compliance with the Data Protection Legislation, the FOIA, in accordance with *Clause 24 (Freedom of Information)* and *Clause 25 (Data Protection)* and any other legislation applicable to the Services;
  - 27.1.4 to review any records created during the provision of the Services;
  - 27.1.5 to review any books of account kept by the Supplier in connection with the provision of the Services;
  - 27.1.6 to carry out the audit and certification of the Authority's accounts;
  - 27.1.7 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;
  - 27.1.8 to verify the accuracy and completeness of the Management Reports and Financial Reports delivered or required by this agreement.
- 27.2 Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this *Clause 27* more than twice in any calendar year.

- 27.3 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.
- 27.4 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:
- 27.4.1 all information requested by the above persons within the permitted scope of the audit;
  - 27.4.2 reasonable access to any sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
  - 27.4.3 access to the Supplier's Personnel.
- 27.5 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 27.6 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.
- 27.7 If an audit identifies that:
- 27.7.1 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;
  - 27.7.2 the Authority has overpaid any Charges, the Supplier shall pay to the Authority the amount overpaid within twenty eight (28) days. The Authority may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
  - 27.7.3 the Authority has underpaid any Charges, the Authority shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Supplier in relation to invoicing within twenty eight (28) days.

## **28. INTELLECTUAL PROPERTY**

- 28.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property created by the Supplier or any employee, agent or subcontractor of the Supplier:
- 28.1.1 in the course of performing the Services; or
  - 28.1.2 exclusively for the purpose of performing the Services,
- shall vest in the Authority on creation.
- 28.2 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**

### **29. TERMINATION FOR BREACH**

- 29.1 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:
- 29.1.1 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 29.1* if the Supplier has failed to remedy such breach within twenty eight (28) days of receipt of notice from the Authority (a '**Remediation Notice**') to do so;
  - 29.1.2 if a Consistent Failure has occurred;
  - 29.1.3 if a Catastrophic Failure has occurred;
  - 29.1.4 if there is an Insolvency Event.
  - 29.1.5 if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010.
  - 29.1.6 if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.
- 29.2 The Authority may terminate this agreement in accordance with the provisions of *Clause 31 (Force majeure)*, *Clause 32 (Prevention of bribery)* and *Clause 33 (Compliance with Anti-Slavery and Human Trafficking Laws)*.
- 29.3 If this agreement is terminated by the Authority for cause 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 for cause.

### **30. TERMINATION ON NOTICE**

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

30.2 Without affecting any other right or remedy available to it, either party may terminate this agreement at any time, in whole or in part, with the expressed written consent of the other party. Where termination is in accordance with *Clause 30.2* the parties shall agree the period of notice required.

### **31. FORCE MAJEURE**

31.1 Subject to the remaining provisions of this *Clause 31*, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.

31.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:

31.2.1 give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;

31.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and

31.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

31.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

31.4 The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable supplier should have foreseen and provided for the cause in question.

31.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Supplier is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice

31.6 The affected party shall notify the other party 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.

- 31.7 The Authority may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Supplier if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than ten (10) Working Days.

## **32. PREVENTION OF BRIBERY**

- 32.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier's Personnel, have at any time prior to the Commencement Date:

32.1.1 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

32.1.2 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.

- 32.2 The Supplier shall not during the term of this agreement:

32.2.1 commit a Prohibited Act; and/or

32.2.2 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.

- 32.3 The Supplier shall during the term of this agreement:

32.3.1 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

32.3.2 keep appropriate records of its compliance with its obligations under *Clause 32.3.1* and make such records available to the Authority on request.

- 32.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of *Clause 32.1* and/or *Clause 32.2*, or has reason to believe that it has or any of the Supplier's Personnel have:

32.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;



- 32.4.2 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
- 32.4.3 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.
- 32.5 If the Supplier makes a notification to the Authority pursuant to *Clause 32.4*, the Supplier 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 27 (Audit)*.
- 32.6 If the Supplier is in Default under *Clause 32.1* and/or *Clause 32.2*, the Authority may by notice:
  - 32.6.1 require the Supplier to remove from performance of this agreement any Supplier's Personnel whose acts or omissions have caused the Default; or
  - 32.6.2 immediately terminate this agreement.
- 32.7 Any notice served by the Authority under *Clause 32.6* 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).

### **33. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS**

- 33.1 In performing its obligations under the agreement, the Supplier shall:
  - 33.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
  - 33.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
  - 33.1.3 include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this *Clause 33*.
  - 33.1.4 notify the Authority as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.
  - 33.1.5 maintain a complete set of records to trace the supply chain of all Services provided to the Authority in connection with this agreement; and permit the

Authority and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this *Clause 33*.

33.2 The Supplier represents and warrants that at the date of this agreement it not has been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

33.3 The Authority may terminate the agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this *Clause 33*.

#### **34. CONSEQUENCES OF TERMINATION OR EXPIRY**

34.1 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 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.

34.2 On termination of this agreement and on satisfactory completion of the Exit 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's Authorised Representative or Chief Executive Officer shall certify full compliance with this clause.

34.3 The provisions of *Clause 6.3 (KPIs)*, *Clause 21 (Indemnities)*, *Clause 23 (Insurance)*, *Clause 24 (Freedom of Information)*, *Clause 25 (Data Protection)*, *Clause 27 (Audit)*, *Clause 29 (Termination for breach)* and this *Clause 34* shall survive termination or expiry of this agreement.

### **GENERAL PROVISIONS**

#### **35. 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.

#### **36. RIGHTS AND REMEDIES**

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by Law.

### **37. SEVERABILITY**

- 37.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 37.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **38. PARTNERSHIP OR AGENCY**

- 38.1 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.
- 38.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

### **39. THIRD PARTY RIGHTS**

- 39.1 No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 39.2 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.

### **40. PUBLICITY**

- 40.1 The Supplier shall not:
- 40.1.1 make any press announcements or publicise this agreement or its contents in any way; or
  - 40.1.2 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.

#### **41. NOTICES**

- 41.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing marked for the attention of the party's Authorised Representative and shall be 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).
- 41.2 Any notice or communication shall be deemed to have been received:
- 41.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - 41.2.2 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 at the time recorded by the delivery service.
- 41.3 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.
- 41.4 A notice given under this agreement is not valid if sent by email.

#### **42. ENTIRE AGREEMENT**

- 42.1 This agreement, the schedules and the documents annexed to it or otherwise referred to in it 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.
- 42.2 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 or negligent misstatement based on any statement in this agreement.

#### **43. 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.

#### **44. JURISDICTION**

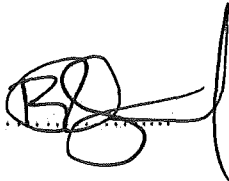
Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

**IN WITNESS** whereof the parties hereto have caused this agreement to be executed and delivered as a deed the day and year first before written.

**EXECUTED** as a **DEED** by affixing the **COMMON SEAL** of the **ISLE OF WIGHT COUNCIL** in the presence of:

**BEN GARD  
PRINCIPAL LAWYER  
AUTHORISED SIGNATORY  
ISLE OF WIGHT COUNCIL**

Authorised Signatory .....



141861

**EXECUTED** as a **DEED** by **SWEETSPOT GROUP LIMITED**

[Two Directors or One Director and the Company Secretary executing the agreement]:

acting by [ ] a director of the company and [ ] [a director of the company] [the company secretary]:

Signature: .....  
Director

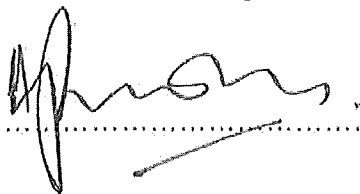
Signature: .....  
[Director] [Company Secretary]

**OR**

[A single Director executing the agreement in the presence of a witness]:

acting by [ ] a director of the company:

Signature: .....  
Director



H. J. ROBERTS.

In the presence of:

Witness Name (PRINTED)..... JONATHAN DAVINS.....

Witness Signature.....  .....

Address..... Nant Cottage, Hall Rd, Nant Bur, .....

..... Suffolk CO8 5A1 .....

Occupation..... Partnerships Director .....

**SCHEDULE 1  
SPECIFICATION**

Contained in the annexed zip folder and including the following documentation:

- Tour of Britain – Specification Document 2022
- TOB 2021 Promotion an activation pack
- Partnering with World Class Cycling Events 2021



Schedule 1 Specification Zip Folder.zip

**SCHEDULE 2  
CONTRACT MANAGEMENT & PERFORMANCE REGIME**

**Part 1  
Contact Details/Meeting/Reports**

1.1 Initial Authority Representative

<b>Name</b>	Mr Alec Broome
<b>Role/responsibility</b>	Project Manager
<b>Address</b>	County Hall High Street Newport Isle of Wight PO30 1UD
<b>Email address</b>	alec.broome@iow.gov.uk
<b>Telephone Number</b>	01983 821000

1.2 Initial Supplier Representative

<b>Name</b>	Jonathan Durling
<b>Role/responsibility</b>	Partnerships Director
<b>Address</b>	Unit 1, Horizon Business Village, 1 Brooklands Road, Weybridge, Surrey, KT13 0TJ
<b>Email address</b>	jonathand@thetour.co.uk
<b>Telephone Number</b>	01932 831485

1.3 Key personnel of either the Authority or the Supplier concerned with the day to day monitoring and/or management of the agreement in addition to those set out at paragraphs 1.1 and 1.2 above.

<b>Name</b>	<b>Role/Responsibility</b>	<b>Address</b>	<b>Email Address</b>	<b>Telephone Number</b>
Jim Fawcett	Economic Development Officer	County Hall High Street Newport Isle of Wight PO30 1UD	jim.fawcett@iow.gov.uk	01983 821000
Alex Minns	Assistant Director of Neighbourhoods	County Hall High Street Newport Isle of Wight PO30 1UD	alex.minns@iow.gov.uk	01983 821000

#### 1.4 Contract Meetings

<b>Frequency</b>	Monthly initially for the first six months. Frequency thereafter to be determined by authority representative  Annual Contract review on the anniversary of the agreement	<b>Location of contract meeting</b>	County Hall High Street Newport Isle of Wight PO30 1UD  Or teleconference (Microsoft Teams)
<b>Notice required to arrange meeting</b>	5 working days	<b>How many working days before meeting agenda circulated</b>	5 working days

#### 1.5 Management Information Report

<b>Frequency Report created and circulated</b>	Management Information Report – Monthly- (Appendix	<b>Contents of report</b>	Detailed in the table at paragraph 2.8 in Part 2 of this schedule, including
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	<p>A) Performance Report</p> <p>The dates for report distribution and the periods that the reports will cover are detailed in Appendix A Performance Report.</p>		<p>the 'Funding Achievement Tracker'/Sponsorship targets &amp; Sponsorship Income Agreed/Evidence of social Value Achievement (Appendix A Performance Report)</p>
<b>Format of report</b>	Emailed- (Appendix A) Performance Report	<b>Circulation list</b>	Persons named in paragraphs 1.1, 1.2, 1.3

**Part 2  
KPIs**

- 2.1 The KPIs which the Parties have agreed are contained in the table at paragraph 2.8 below and shall be used to measure the performance of the Service. They are designed to be a transparent clear way of supporting continuous improvement in performance.
- 2.2 The Authority may add and/or amend performance measures/KPIs throughout the life of the contract.
- 2.3 For the purpose of this agreement, a reporting period is monthly. All measures are to be reported on a monthly basis unless otherwise stated.
- 2.4 The Authority will carry out an annual review of the contract performance in accordance with the Annual Contract Review Report (Part 4 of this schedule) this is for internal monitoring purposes.
- 2.5 All KPI data will be provided on a monthly basis (unless otherwise stated). All reports shall be produced by the Supplier and circulated in line with the information contained in paragraph 1.4 (Contract Meetings) and paragraph 1.5 (Reports) of Part 1 of this schedule.
- 2.6 Appendix A Performance Report to be completed monthly and returned to the Authority representatives named in paragraph s1.1 and 1.3 of Part 1 of this schedule.
- 2.7 Sponsorship secured is defined as monies paid to the Isle of Wight Council (cleared funds)
- 2.8 KPIs

KPIs	Method of service measurement period	Target KPI	Performance Measure/KPI category (Red/Amber/Green)	Performance	Remedy/Service Credits
1. Sponsorship funding achievement Secured (monthly)	Funding that has been secured in connection with the Tour of Britain Sponsorship agreement. Supplier to record data for this KPI in the 'funding achievement tracker' tab in appendix A Performance Report	Percentage of funding attained in line with monthly target	Red - 0% - 50% of monthly target achieved Amber - 50% - 99% of monthly target achieved Green - 100% or more of monthly target achieved	Red - Contract failing. Supplier to implement recovery programme. Amber - Contract isn't performing to the required level to meet the sponsorship target. Green - Contract Performing well and sponsorship attainment on target	Red - Continued underperformance can lead to a consistent failure (Part 4 Consistent Failure). Red continued underperformance is defined as 4 reporting periods of underperformance. In red performance) Amber - Continued underperformance can

						lead to a consistent failure (Part 4 consistent failure). Amber continued underperformance is defined as 6 reporting periods of underperformance (resulting in amber performance) Green – No remedial action required. Contract performing well
2. Sponsorship funding achievement Secured (milestones)	Funding that has been secured in connection with the Tour of Britain Sponsorship agreement. Supplier to record data for this KPI in the 'funding achievement tracker' tab in appendix A Performance Report	By 31.01.2022 – 30% of target secured By 31.05.2022 – 70% of target secured By 31.08.2022 – 100% of target secured	Red - 0% - milestone achieved Amber - 50% - milestone achieved Green - 100% or more of milestone achieved	Red - Contract failing. Supplier to implement recovery programme. Amber - Contract isn't performing to the required level to meet the sponsorship target. Green - Contract Performing well and sponsorship attainment on target	Red - Underperformance can lead to a consistent failure. Amber - Review why targets are not being met. Implement remedial plan detailing the system or process for improvement and inform the authorised officer of the remedial plan. Green – No remedial action required. Contract performing well	
3. Performance Report	Supplier to record data for this KPI in the 'Sponsorship Targets' tab and 'Sponsorship Income Agreed to include Sponsorship income agreed	Records to be updated and circulated monthly in line with paragraph 1.5 of Part 1 of this schedule	N/A	N/A	N/A	N/A

<ul style="list-style-type: none"> <li>• Sponsorship income paid</li> <li>• Details of negotiations</li> <li>• Achievements &amp; benefits</li> <li>• Response times to requests from potential sponsors</li> <li>• Number of disputes handled and resolved</li> </ul>					
<p>4. Social Value</p> <ul style="list-style-type: none"> <li>• Social value (local economy)</li> </ul>	<p>10% or more of overall sponsorship sourced from local businesses. This is defined as a company with a registered office on the Isle of Wight.</p>	<p>10% or more of the overall sponsorship raised to be from local economy.</p>	N/A	N/A	N/A

### **Part 3 Consistent failure**

#### **3. Consistent Failure**

3.1 In this agreement, Consistent Failure shall mean:

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

Or

(ii) 4 reporting periods (4 months) of poor performance (resulting in a red KPI/measure)

Or

(iii) 6 reporting periods (6 months) of poor performance (resulting in an amber KPI/measure)

Or

(iv) 1 milestone not being met (resulting in a red KPI/measure)

Consistent Failure can cause the current Supplier of the service to be replaced by the 'stand by' supplier to ensure that the schedule of work and progress towards targets is adhered to.

3.2 If the Supplier triggers 'Consistent Failure' then the Authority reserves the right to terminate the agreement for breach of contract.

3.3 Exceptions to the application of Consistent Failure:

(a) Consistent failure shall not be applied where any of the following circumstances occur, provided that the Supplier has used its best endeavours to make alternative arrangements to carry out the work and it shall have reported the matter giving rise to the omission or failure to the Authority's Authorised Representative as soon as it became reasonably apparent that a omission or failure would occur:

(i) Extenuating circumstances reasonably considered being beyond the control of the Supplier such as civil emergencies, disputes or industrial action in an organisation other than the Supplier's.

(ii) Omission or failure as a consequence of special event arrangements made by prior agreement in writing with the Authority's Authorised Representative unless the default arises as a direct consequence of the Supplier's performance of work for that event.

(iii) Adjustments to the Services made by prior agreement with the Authority's Authorised Representative in writing in the interest of efficiency and which give rise to savings to the Authority under the agreement.

- (iv) Any other circumstances considered to be reasonable by the Authority's Authorised Representative.
  - (v) Where exceptionally adverse weather conditions prevent the Services from being performed.
- (b) In the event of any cause affecting the performance by the Supplier of its obligations under this agreement which has resulted in the Supplier being unable to perform the Services and which the Authority has agreed in accordance with the provisions of *Clause 31 (Force Majeure)* is a Force Majeure Event. Where the circumstances set out in this paragraph 3.3 (b) apply the Authority shall not be liable to make any payment to the Supplier in respect of such non-performance and any sum already paid in respect of any part of the Services not yet performed shall be held to the credit of the Authority and returned to the Authority.

**Part 4  
Annual Contract Review Report**

<b>OVERVIEW</b>	
<b>Contract name</b>	
<b>Supplier</b>	
<b>Contract commencement date</b>	
<b>Contract end date (initial term)</b>	
<b>Extension end date (if applicable)</b>	
<b>Department</b>	
<b>Contract manager</b>	
<b>Date report completed</b>	
<b>CONTRACT STATUS</b>	
<b>Total contract value (as tendered or formally varied)</b>	
<b>Annual value of contract</b>	
<b>Allocated budget</b>	
<b>Contract expenditure to date</b>	
<b>Percentage of contract completed</b>	
<b>Current stage of contract</b>	

<b>Areas where implementation has not been completed</b>	
<b>Milestones of the contract</b>	
<b>Status in completing milestones</b>	
<b>Description of approved variations from original contract (price/specification/performance monitoring/KPIs)</b>	
<b>PERFORMANCE</b>	
<b>Key Performance Indicators/Outputs</b>	<b>Summary of performance against the measure</b>
<b>Overall Performance</b>	
<b>Are there any unresolved performance issues, problems or contractual matters which need to be addressed with the supplier?</b>	



Rate the performance of the supplier in the following areas, where:	Score (out of 5) 5 = excellent 4 = good 3 = average 2 = below average 1 = poor N/A = not applicable	Comments
Quality of work performed		
Compliance with contract		
Achievement of target dates		
Management of contract by supplier		
Frequency and quality of supplier communication		
Value for money		
Other - please specify		
<b>RISK MANAGEMENT</b>		
Existing risks		
Emerging risks		
Status of risk management – document what is being done to proactively manage the existing and emerging risks		
<b>CONCLUSION/NEXT STEPS</b>	<b>Comments</b>	
Extension reviews due		
Learnings to date		
Opportunities to improve contract outcomes		
Other relevant issues for future procurements		

## Appendix A Performance Report



Appendix A of  
Schedule 2 Terms ar

**SCHEDULE 3  
SUPPLIER'S TENDER**

Contained in the annexed zip folder and including the following documentation:

- Quotation Response Document (Part B)
- Sweetspot – Additional Information
- Clarification Response Stage 2



Schedule 3 Supplier's Tender Zip Folder.zip

**SCHEDULE 4**  
**CHARGES AND PAYMENT**

**1. CALCULATION OF THE CHARGES**

- 1.1 The Charges shall be calculated on the basis of the rates and prices set out in this Schedule and the Pricing Detail set out in *Schedule 3 (Supplier's Tender)*.
- 1.2 The Charges to be payable to the Supplier for the Final Stage of the Tour of Britain 2022 commission shall be 20% of the total sponsorship monies received based on a target total sponsorship amount of £340,000 and therefore the maximum amount of commission to be paid to the Supplier shall be £68,000.
- 1.3 The % figure chargeable by the Supplier for any future commissions for additional events made under this agreement shall be 20% of the total sponsorship monies received.
- 1.4 The Charges shall be limited to payment of a % of the sponsorship income generated by the supplier.
- 1.5 The Charges are exclusive of VAT which shall be paid by the Authority at the prevailing rate.

**2. PAYMENT PLAN**

- 2.1 The Supplier shall be responsible for introducing relevant representatives from the sponsor organisation to Authority so that a legal agreement for the sponsorship funds can be concluded.
- 2.2 The Authority shall pay the Supplier as soon as sponsors' funds are secured through a legal agreement with the Authority and received by the Authority.
- 2.3 Upon receipt of the sponsorship monies the agreed % commission shall be paid to the Supplier on the submission of a valid invoice.
- 2.4 Invoices must be submitted to:  
Isle of Wight Council  
PO Box 235  
Newport  
Isle of Wight  
PO30 9FJ

**SCHEDULE 5**  
**BUSINESS CONTINUITY**

1. The Supplier shall have in place a plan (**'Business Continuity Plan'**) (to be made available to the Authority on request) that sets out the detailed procedures and processes to be followed and actions to be taken if there is a failure or disruption of the Services.
2. The parties shall comply with the provisions of the Business Continuity Plan and the Supplier shall ensure that it is able to implement the Business Continuity Plan at any time in accordance with its terms.
3. The Supplier shall review the Business Continuity Plan on a regular basis. Subject to *Paragraph 4* of this Schedule, the Authority may require the Supplier to conduct additional reviews of the Business Continuity Plan where there has been any significant change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Business Continuity Plan.
4. If the Authority requires an additional review of the Business Continuity Plan it shall give the Supplier written notice and the Supplier shall conduct the review in accordance with the Authority's requirements and the relevant provisions of the Business Continuity Plan. Following each review requested in accordance with this paragraph the Supplier shall send to the Authority a written report summarising the results of the review and shall promptly implement any actions or remedial measures which the Authority considers to be necessary as a result.
5. The Supplier shall undertake regular risk assessments in relation to the provision of the Services and shall use these risk assessments to inform their Business Continuity Plan.

**SCHEDULE 6**  
**CHANGE CONTROL**

**1. GENERAL PRINCIPLES**

- 1.1 Where the Authority or the Supplier sees a need to change this agreement, the Authority may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in *Paragraph 2* of this Schedule.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Authority and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule, shall be undertaken entirely at the expense and liability of the Supplier.

**2. PROCEDURE**

- 2.1 Discussion between the Authority and the Supplier concerning a Change shall result in any one of the following:
  - 2.1.1 no further action being taken; or
  - 2.1.2 a request to change this agreement by the Authority; or
  - 2.1.3 a recommendation to change this agreement by the Supplier.
- 2.2 Where a written request for an amendment is received from the Authority, the Supplier shall, unless otherwise agreed, submit two (2) copies of a Change Control Note signed by the Supplier to the Authority within three (3) weeks of the date of the request
- 2.3 A recommendation to amend this agreement by the Supplier shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Supplier at the time of such recommendation. The Authority shall give its response to the Change Control Note within three (3) weeks.
- 2.4 Each Change Control Note shall contain:
  - 2.4.1 the title of the Change;
  - 2.4.2 the originator and date of the request or recommendation for the Change;
  - 2.4.3 the reason for the Change;
  - 2.4.4 full details of the Change, including any specifications;
  - 2.4.5 the price, if any, of the Change;

- 2.4.6 a timetable for implementation, together with any proposals for acceptance of the Change;
- 2.4.7 a schedule of payments if appropriate;
- 2.4.8 details of the likely impact, if any, of the Change on other aspects of this agreement including:
  - (a) the timetable for the provision of the Change;
  - (b) the personnel to be provided;
  - (c) the Charges;
  - (d) the Documentation to be provided;
  - (e) the training to be provided;
  - (f) working arrangements;
  - (g) other contractual issues;
- 2.4.9 the date of expiry of validity of the Change Control Note;
- 2.4.10 provision for signature by the Authority and the Supplier; and
- 2.4.11 details of how the costs that would be incurred by the parties if the Change subsequently results in the termination of this agreement under *Clause 29.1.6 (Termination for breach)* will be apportioned.
- 2.5 For each Change Control Note submitted by the Supplier the Authority shall, within the period of the validity of the Change Control Note:
  - 2.5.1 allocate a sequential number to the Change Control Note; and
  - 2.5.2 evaluate the Change Control Note and, as appropriate:
    - (a) request further information;
    - (b) accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Supplier; or
    - (c) notify the Supplier of the rejection of the Change Control Note.
- 2.6 A Change Control Note signed by the Authority and by the Supplier shall constitute an amendment to this agreement.

## SCHEDULE 7

### EXIT

#### 1. OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

- 1.1 Each party shall appoint a person for the purposes of managing the parties' respective obligations under this Schedule and provide written notification of such appointment to the other party within one month of the Commencement Date, unless otherwise agreed by the Authority in writing (the '**Exit Manager**').
- 1.2 The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-Contractors comply with this Schedule.
- 1.3 The parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this agreement and all matters connected with this Schedule and each party's compliance with it.

#### 2. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 2.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Supplier entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Supplier undertaking due diligence:
  - 2.1.1 details of the Service(s);
  - 2.1.2 details of individual care and support requirements if relevant;
  - 2.1.3 a copy of the registers required in accordance with *Paragraphs 2.1.1 and 2.1.2*, updated by the Supplier up to the date of delivery of such registers;
  - 2.1.4 an inventory of Authority data in the Supplier's possession or control;
  - 2.1.5 details of any key terms of any third-party contracts and licences, particularly as regards charges, termination, assignment and novation;
  - 2.1.6 a list of on-going and/or threatened disputes in relation to the provision of the Services;
  - 2.1.7 such other material and information as the Authority shall reasonably require, (together, the '**Exit Information**').
- 2.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this



*Paragraph 2.2* disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-Contractors' prices or costs).

2.3 The Supplier shall:

2.3.1 notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and

2.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.

2.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than four (4) updates in any six (6) month period.

2.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

2.5.1 prepare an informed offer for those Services; and

2.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

### 3. EXIT PLAN

3.1 The Supplier shall on receipt of a reasonable request from the Authority deliver to the Authority an Exit Plan which:

3.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination of this agreement;

3.1.2 complies with the requirements set out in *Paragraph 3.2* together with *Paragraph 3.3*; and

3.1.3 is otherwise reasonably satisfactory to the Authority.

3.2 The parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

3.3 The Exit Plan shall set out, as a minimum:

3.3.1 how the Exit Information is obtained;

3.3.2 separate mechanisms for dealing with '**Ordinary Exit**' (being any termination of this agreement which occurs either due to the passing of time or pursuant to *Clause 30 (Termination on Notice)* and '**Emergency Exit**'

(being termination in full or in part for any other reason), the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;

- 3.3.3 the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
  - 3.3.4 the management structure to be employed during the termination period;
  - 3.3.5 a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
  - 3.3.6 how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes and documentation;
- 3.4. The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Authority for review. Within twenty (20) Working Days following submission of the revised Exit Plan, the parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the parties are unable to agree the contents of the revised Exit Plan within that twenty (20) Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 3.5 Within twenty (20) Working Days after service of a Termination Notice by either party or six (6) months prior to the expiry of this agreement, the Supplier will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 3.6 The parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the '**Termination Services**' (being a continuation of the carrying out of the

Services in accordance with the terms of this agreement unless varied by agreement with the Authority) in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

#### **4 TERMINATION OBLIGATIONS**

- 4.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 4.2 Upon termination or expiry (as the case may be), the Supplier shall:
  - 4.2.1 cease to use the Authority data;
  - 4.2.2 provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the information relating to the Services and individual care and support arrangements in paper and electronic form (or such other format as reasonably required by the Authority);
  - 4.2.3 return to the Authority such of the following as is in the Supplier's possession or control all materials created by the Supplier under this agreement in which the IPRs are owned by the Authority;
  - 4.2.4 provide access during normal working hours to the Authority and/or the Replacement Supplier for up to six (6) years' after expiry or termination to such information relating to the provision of the Services as remains in the possession or control of the Supplier.
- 4.3 Upon termination or expiry (as the case may be), each party shall return to the other party (or if requested, destroy or delete) all Confidential Information of the other party and shall certify that it does not retain the other party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

## SCHEDULE 8

### TUPE

#### 1. DEFINITIONS

In this section the following definitions shall apply:

**'Acquired Rights Directive'**: the Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11 pm on 31 January 2020;

**'Employee Liabilities'**: all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

**'Employment Regulations'**: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive;

**'Replacement Supplier'**: any third party supplier of Replacement Services appointed by the Authority from time to time (or where the Authority is providing Replacement Services for its own account, the Authority);

**'Replacement Services'**: any services which are the same as or substantially similar to the Services following the expiry or termination or Partial Termination of this agreement, whether those services are provided by the Authority internally and/or by any third party;

**'Replacement Sub-Contractor'**: a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date;

**'Relevant Transfer'**: a transfer of employment to which the Employment Regulations apply;

**'Relevant Transfer Date'**: in relation to a Relevant Transfer, the date upon which the relevant transfer takes place;

**'Service Transfer'**: any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;

**'Service Transfer Date'**: the date of a Service Transfer;

**'Staffing Information'**: in relation to all persons identified on the Supplier's Provisional Personnel List or Supplier's Final Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;

- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

**'Supplier's Final Personnel List'**: a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

**'Supplier Personnel'**: all directors, officers, employees, agents, consultants and contractors of the Supplier and/or any Sub-Contractor engaged in the performance of the Supplier's obligations under this agreement;

**'Supplier's Provisional Personnel List'**: a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

**'Transferring Supplier Employees'**: those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

## 2. INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Replacement Supplier or Replacement Sub-Contractor, as the case may be.

## 3. PRE-SERVICE TRANSFER OBLIGATIONS

3.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:

- 3.1.1 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
- 3.1.2 receipt of the giving of notice of early termination or any Partial Termination of this agreement;
- 3.1.3 the date which is twelve (12) months before the end of the Term; and
- 3.1.4 receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six (6) month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Supplier's Provisional Personnel List and it shall provide an updated Supplier's Provisional Personnel List at such intervals as are reasonably requested by the Authority.

3.2 At least twenty eight (28) days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-Contractor:

3.2.1 the Supplier's Final Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and

3.2.2 the Staffing Information in relation to the Supplier's Final Personnel List (insofar as such information has not previously been provided).

3.3 The Authority shall be permitted to use and disclose information provided by the Supplier under *Paragraph 3.1* and *Paragraph 3.2* for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.

3.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to *Paragraph 3.1* and *Paragraph 3.2* shall be true and accurate in all material respects at the time of providing the information.

3.5 From the date of the earliest event referred to in *Paragraph 3.1.1*, *Paragraph 3.1.2* and *Paragraph 3.1.3*, the Supplier agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

3.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier's Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

3.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);

3.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;

3.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Personnel List;

- 3.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
  - 3.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Personnel List save by due disciplinary process,  
and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Personnel List regardless of when such notice takes effect.
- 3.6 During the Term, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:
- 3.6.1 the numbers of employees engaged in providing the Services;
  - 3.6.2 the percentage of time spent by each employee engaged in providing the Services; and
  - 3.6.3 a description of the nature of the work undertaken by each employee by location.
- 3.7 The Supplier shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Supplier's Final Personnel List who is a Transferring Supplier Employee:
- 3.7.1 the most recent month's copy pay slip data;
  - 3.7.2 details of cumulative pay for tax and pension purposes;
  - 3.7.3 details of cumulative tax paid;
  - 3.7.4 tax code;
  - 3.7.5 details of any voluntary deductions from pay; and
  - 3.7.6 bank/building society account details for payroll purposes.



#### **4. EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 4.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the Supplier of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the Supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.
- 4.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.
- 4.3 Subject to *Paragraph 4.4*, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 4.3.1 any act or omission of the Supplier or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;

- 4.3.2 the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:
- (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
  - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
- 4.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- 4.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 4.3.5 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- 4.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be

liable by virtue of this agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and

4.3.7. any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

4.4 The indemnities in *Paragraph 4.3* shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

4.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date); or

4.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.

4.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

4.5.1 the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

4.5.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with the Law.

4.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, the Authority shall procure that the Replacement Supplier shall,

- or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 4.7 If after the fifteen (15) Working Day period specified in *Paragraph 4.5.2* has elapsed:
- 4.7.1 no such offer of employment has been made;
  - 4.7.2 such offer has been made but not accepted; or
  - 4.7.3 the situation has not otherwise been resolved
- the Authority shall advise the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 4.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of *Paragraph 4.5* to *Paragraph 4.7*, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of *Paragraph 3.7* provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 4.9 The indemnity in *Paragraph 4.8*:
- 4.9.1 shall not apply to:
    - (a) in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
    - (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
  - 4.9.2 shall apply only where the notification referred to in *Paragraph 4.5.1* is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) months of the Service Transfer Date.
- 4.10 If any such person as is described in *Paragraph 4.5* is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in *Paragraph 4.5* to *Paragraph 4.7*, such person shall be treated as a Transferring Supplier Employee and

the Replacement Supplier and/or Replacement Sub-Contractor shall comply with such obligations as may be imposed upon it under applicable Law.

- 4.11 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

4.11.1 the Supplier and/or any Sub-Contractor; and

4.11.2 the Replacement Supplier and/or the Replacement Sub-Contractor.

- 4.12 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-Contractor, shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

- 4.13 Subject to *Paragraph 4.14*, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:

4.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor;

4.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:

(a) any collective agreement applicable to the Transferring Supplier Employees; and/or

- (b) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;
- 4.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 4.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 4.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 4.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
- (b) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

- 4.13.7 a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and
- 4.13.8 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 4.14 The indemnities in *Paragraph 4.13* shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

