

**CONTRACT FOR THE EXTENSION OF THE BURIAL AREA
AND MINOR WORKS
FLEET CEMETERY
CEMETERY ROAD,
OFF RICHARD CLOSE, FLEET**

This agreement is dated [Insert]

PARTIES

(1) **Fleet Town Council** (the “**Authority**”).

(2) [Insert] [incorporated and registered in England and Wales]
with company number [Insert]
whose registered office is at [Insert]
(the “**CONTRACTOR**”).

BACKGROUND

The Contractor has tendered for the Services and the Authority and the Contractor have agreed the Contractor shall provide the Services in accordance with this Agreement.

AGREED TERMS

1 Interpretation

1.1 In these terms and conditions:

“Agreement”	means the contract between (i) the Authority and (ii) the Contractor for the Services and comprises these terms and conditions and the schedules appended to them and any purchase order provided by the Authority to the Contractor but excluding any terms and conditions on the reverse of such purchase order;
“Authority’s Representative”	has the meaning given to it in clause 3.2;
“Best Value”	means the general duty of the Authority to achieve continuous improvement in the way in which its functions are exercised pursuant to the provision of the Local Government Act 1999;
“Commencement Date”	means [Insert]
“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer”:	have the same meanings as set out in the GDPR;
“Charges”	means the charges for the Services as specified in the Pricing Schedule;
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential (including any Personal Data) subject always to clause 13.3;
“Deliverables”	all materials produced by the Contractor in relation to the Services on and / or in any media, including without limitation reports, diagrams,

	computer programs, data and specifications (including without limitation drafts);
"Data Protection Legislation"	means (i) the General Data Protection Regulation (Regulation (EC) 2016/679 (GDPR), the Law Enforcement Directive (Directive(EU) 2016/6900 (LED) and any national implementing laws, as amended from time to time, (ii) the Data Protection Act 2018 (DPA 2018) (subject to Royal Assent) to the extent that it relates to the processing of personal data and privacy (iii) all applicable law about the personal data and privacy, including in each of (i), (ii) and (iii) all relevant regulatory policy, mandatory guidance and codes of practice.
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
"Data Subject Request"	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Data Protection Impact Assessment"	means an assessment by the Contractor of the impact of the envisaged processing on the protection of Personal Data;
"Equipment"	means all such equipment as is necessary for the proper performance of the Services;
"FOIA"	means the Freedom of Information Act 2000;
"Information"	has the meaning given under section 84 of the FOIA;
"Initial Term"	the period commencing on the Commencement Date and ending four years subject to earlier termination in accordance with this Agreement;
"Intellectual Property Rights"	patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
"Joint Controllers"	where two or more Controllers jointly determine the purpose and means of processing
"Method Statements"	means the methodologies submitted by the Contractor in his tender for the Services and as contained in schedule 3;
"Party"	means the Contractor or the Authority (as appropriate) and "Parties" shall mean both of them;
"Pricing Schedule"	means the Pricing Schedule submitted by Contractor as part of its

tender and as set out in schedule 2;

“Protective Measures”		means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the measures adopted by it;
“Purchase Number ”	Order	means the Authority’s unique number relating to the supply of the Services as specified on the purchase order provided by the Authority to the Contractor before or at the beginning of the provision of the Services;
“Request for Information”		has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Services”		means the services to be supplied by the Contractor to the Authority under the Agreement as described in the Specification;
“Specification”		means the specification for the Services set out in schedule 1;
“Staff”		means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor of the Contractor engaged in the performance of the Contractor’s obligations under the Agreement;
“Staff Vetting Procedures”		means vetting procedures that accord with good industry practice or, where requested by the Authority, the Authority’s procedures for the vetting of personnel as provided to the Contractor from time to time;
“Sub-Processor”		means any third party appointed to process Personal Data on behalf of the Contractor related to this Agreement.
“Contractor’s Representative”		has the meaning given to it in clause 3.1;
“Term”		means the Initial Term as such period may be as may be varied by any extensions to this Agreement in accordance with clause 4.2 or the earlier termination of this Agreement in accordance with its terms;
“VAT”		means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“Working Day”		means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word ‘including’ shall be understood as meaning ‘including without

limitation’.

- 1.3 Where there is any conflict or inconstancy between the provision of this Agreement, such conflict or inconsistency shall be resolved according to the following order of priority
 - 1.3.1 the clauses of this Agreement
 - 1.3.2 the schedules to this Agreement
 - 1.3.3 schedule 3 to this Agreement]

2 Supply of Services

- 2.1 In consideration of the Authority’s agreement to pay the Charges, the Contractor shall supply the Services to the Authority for the Term subject to and in accordance with the Agreement.
- 2.2 In supplying the Services, the Contractor shall:
 - 2.2.1 co-operate with the Authority in all matters relating to the Services and comply with all the Authority’s instructions;
 - 2.2.2 provide the Services and Deliverables within the timescales as may from time to time be specified by the Authority acting reasonably;
 - 2.2.3 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Contractor’s industry, profession or trade;
 - 2.2.4 provide the Services in such a manner as to ensure that the services provided by the Authority are not disrupted;
 - 2.2.5 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor’s obligations are fulfilled in accordance with the Agreement;
 - 2.2.6 ensure that the Services shall conform with all descriptions and specifications set out in the Specification [and are carried out in accordance with the Method Statements];
 - 2.2.7 comply with all applicable laws; and
 - 2.2.8 maintain and document a quality control system in respect of the Services reasonably acceptable to the Authority’s Representative.
- 2.3 Without prejudice to the generality of clause 23 where the Contractor has Personal Data the Contractor shall ensure that it complies with the Data Protection Legislation. Without in anyway limiting the foregoing the Contractor shall treat any Personal Data with no less care and security that it treats the personal data of its own employees.
- 2.4 Both Parties shall act in good faith towards each other in relation to all matters arising under this Agreement and without limiting the generality of the foregoing:
 - 2.4.1 the Contractor shall inform the Authority’s Representative fully and as soon as possible of any circumstances which might affect the Contractor’s ability to provide the Services whether temporarily or permanently;
 - 2.4.2 each Party shall inform the other fully and as soon as possible of any circumstances which might lead to any substantial change in the nature, composition or amount of work involved in the provision of the Services or any other circumstance which might alter the burden of a Party’s obligations under this Agreement
- 2.5 The Contractor shall provide such assistance and information to the Authority as the Authority may reasonably request in order for the Authority to comply with its

obligations in relation to Best Value and continuous improvement generally.

- 2.6 The Authority may by written notice to the Contractor at any time request a variation to the scope of the Services. In the event that the Contractor agrees to any variation to the scope of the Services and that variation affects the costs to the Contractor of providing the Services, the Charges shall be subject to fair and reasonable adjustment (taking into account the Pricing Schedule) to be agreed in writing between the Authority and the Contractor. No variation to this agreement shall be valid or take any effect unless it is signed by the Authority's Representative and the Contractor's Representative.

3 Representatives

- 3.1 The Contractor's Representative means the following person who shall be the agent of the Contractor for all purposes in connection with this Agreement:

3.1.1	Name	[insert]
3.1.2	Telephone Number	[insert]
3.1.3	Address	[insert]
3.1.4	E-Mail Address	[insert]

- 3.2 The Authority's Representative means the following person who shall be the agent of the Authority for all purposes in connection with this Agreement:

3.2.1	Name	[insert]
3.2.2	Telephone Number	[insert]
3.2.3	Address	[insert]
3.2.4	E-Mail Address	[insert]

4 Term

- 4.1 The Contractor shall provide the Services for the Term.

5 Charges, Payment and Recovery of Sums Due

- 5.1 The Charges shall be the full and exclusive remuneration to the Contractor in respect of the Services. Unless otherwise agreed in writing by the Authority, the Charges shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Services. The Contractor may not make any claim for additional payment on the grounds of any misunderstanding as to the conditions, regulations or requirements relating to the provision of the Services.
- 5.2 The Contractor shall invoice the Authority monthly during the term.
- 5.3 Each invoice shall include the Purchase Order Number and such other supporting information as the Authority may reasonably require to verify the accuracy of the invoice.
- 5.4 In consideration of the supply of the Services by the Contractor, the Authority shall consider and verify all invoices submitted by the Contractor in a timely manner and shall pay the Contractor the invoiced amounts no later than 30 days after receipt of a valid invoice. The Authority may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory

performance.

- 5.5 All amounts stated are exclusive of VAT, which shall be charged at the prevailing rate. The Authority shall, following the receipt of a valid VAT invoice, pay to the Contractor a sum equal to the VAT chargeable in respect of the Services.
- 5.6 If there is a dispute between the Parties as to the amount invoiced, the Authority shall pay the undisputed amount. The Contractor shall not suspend the supply of the Services. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.7 If a Party fails to make any payment due to the other Party under this agreement by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above Lloyds Bank base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount
- 5.8 Without prejudice to clause 11.1 if the Contractor uses sub-contractors for the provision of the Services the Contractor shall:
 - 5.8.1 ensure that contracts with such sub-contractors contain a provision requiring the Contractor to consider and verify all invoices submitted by the sub-contractor in a timely manner and a provision to pay any undisputed sums which are due from it to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice;
 - 5.8.2 pay any undisputed sums which are due from it to a sub-contractor within 30 days from the receipt of a valid invoice; and
 - 5.8.3 ensure that its sub-contracts (and any further sub-contracts) contain provisions analogous to this clause 5.8.

6 Intellectual Property Rights

- 6.1 The Contractor hereby assigns to the Authority, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services (including the Deliverables).
- 6.2 The Contractor shall do or procure to be done all such further acts and things and execute or procure the execution of all such other documents for the purpose of securing for the Authority the full benefit of this Agreement, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Authority in accordance with clause 6.1 and / or clause 16.4.3.
- 6.3 The Contractor shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs 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.

7 Premises

- 7.1 The Authority shall provide the Contractor with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All Equipment and other items brought onto the Authority's premises or otherwise used in the provision of the Services by the Contractor shall be at the Contractor's risk.

- 7.2 The Contractor shall be solely responsible for making good any damage to the Authority's premises and / or to any objects contained on such premises which is caused by the Contractor, other than fair wear and tear.
- 7.3 While on the Authority's premises the Contractor shall, and shall procure that all Staff shall, comply with the Authority's security requirements.

8 Equipment / Surveying and Evaluation of Works

- 8.1 The Contractor shall at all times during the Term provide and maintain all Equipment as is necessary for the proper performance of the Services.
- 8.2 The Contractor shall at its own expense keep all Equipment at all times in good and serviceable repair and in such condition as is required to perform the Services in accordance with this Agreement.
- 8.3 The Contractor shall ensure that Equipment used to provide the Services complies with all applicable laws and be entirely suitable for the performance of the Services.
- 8.4 Any equipment provided by the Authority for the purposes of this Agreement shall remain the property of the Authority and shall be used by the Contractor and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Authority on expiry or termination of the Agreement.
- 8.5 The Contractor shall reimburse the Authority for any loss or damage to the equipment provided by the Authority (other than deterioration resulting from normal and proper use) caused by the Contractor or any Staff.
- 8.6 It is a strict condition of this Contract/Agreement that identified site is thoroughly surveyed and evaluated prior to Tender submission. The Council and/or Participant will under no circumstances accept any increase to Tendered sums on the grounds of lack of knowledge or unforeseen difficulties/works.

9 Staff

- 9.1 The Contractor shall:
 - 9.1.1 ensure that all Staff are appropriately supervised, CRB checked, qualified, trained and experienced to provide the Services and that they provide the Services with all reasonable skill, care and diligence;
 - 9.1.2 retain control of the Staff at all times so that the Staff shall not be deemed to be employees, agents or contractors of the Authority;
 - 9.1.3 be liable at all times for all acts or omissions of Staff, so that any act or omission of a member of any Staff which results in a default under this Agreement shall be a default by the Contractor;
 - 9.1.4 replace at its own cost (temporarily or permanently, as appropriate) any member of Staff as soon as practicable if any Staff have been removed or are unavailable for any reason whatsoever;
 - 9.1.5 if requested, provide the Authority with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Authority's premises in connection with the Agreement;
 - 9.1.6 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Authority; and

- 9.1.7 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures.
- 9.2 If the Authority reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Contractor:
- 9.2.1 refuse admission to the relevant person(s) to the Authority's premises;
 - 9.2.2 direct the Contractor to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 9.2.3 require that the Contractor replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Authority to the person removed is surrendered, and the Contractor shall comply with any such notice.
- 9.3 The Contractor(s) shall ensure that all persons employed in the performance of the Services shall at all times be properly attired and presentable.
- 9.4 All persons employed by or in the agency of the Contractor(s) in the performance or supervision of the Services shall at all times during working hours carry identity badges on their persons in a form approved by the Supervising Officer. Such identity badges must be made available for inspection as required by any officer of the Council and/or Participant who shall similarly disclose his or her own identity.
- 9.5 The Contractor(s) shall ensure that all persons **employed in the performance of** the Services shall at all times be properly attired and presentable.
- 9.6 All persons employed by or in the agency of the Contractor(s) in the performance or supervision of the Services shall at all times during working hours carry identity badges on their persons in a form approved by the Supervising Officer. Such identity badges must be made available for inspection as required by any officer of the Council and/or Participant who shall similarly disclose his or her own identity.

10 Default in Performance

- 10.1 Without prejudice to any other right or remedy the Authority may have, if the Contractor fails to provide the Services in whole or in part in accordance with this Agreement the Authority may, itself or using one or more third parties, provide such Services. The costs and charges incurred by the Authority in so doing shall be paid by the Contractor to the Authority on demand or may be deducted by the Authority from any moneys due or which may become due to the Contractor.

11 Assignment and sub-contracting

- 11.1 The Contractor shall not without the prior written consent of the Authority assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Authority may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 11.2 Where the Authority has consented to the placing of sub-contracts, the Contractor shall, at the request of the Authority, send copies of each sub-contract, to the Authority as soon as is reasonably practicable.
- 11.3 The Authority may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Contractor provided that such assignment, novation or disposal shall not increase the burden of the Contractor's obligations under the Agreement.

12 Governance and Records

- 12.1 The Contractor shall at no additional cost to the Authority:
- 12.1.1 on reasonable notice attend such meetings as the Authority may reasonably require with officers and / or members of the Authority and / or attend any committee or sub-committee of the Authority as the Authority may reasonably require and shall ensure that its representatives are suitably qualified and knowledgeable of the Services to attend such meetings; and
 - 12.1.2 submit progress reports to the Authority at the times and in the format specified by the Authority.
- 12.2 The Contractor shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be reasonably requested by the Authority in connection with the Agreement.

13 Confidentiality, Transparency and Publicity

- 13.1 Subject to clause 13.2, each Party shall:
- 13.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
 - 13.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.
- 13.2 Notwithstanding clause 13.1, a Party may disclose Confidential Information which it receives from the other Party:
- 13.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;
 - 13.2.2 to its auditors or for the purposes of regulatory requirements;
 - 13.2.3 on a confidential basis, to its professional advisers;
 - 13.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
 - 13.2.5 where the receiving Party is the Contractor, to the Staff on a need to know basis to enable performance of the Contractor's obligations under the Agreement provided that the Contractor shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 13.2.5 shall observe the Contractor's confidentiality obligations under the Agreement; and
 - 13.2.6 where the receiving Party is the Authority:
 - (a) on a confidential basis to the employees, agents, consultants and contractors of the Authority;
 - (b) on a confidential basis to any successor body or organisation to which the Authority transfers or proposes to transfer all or any part of its business;
 - (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions (including without limitation pursuant to clause 18.5); or
 - (d) in accordance with clause 14

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement, employment contract or arrangement containing terms no less stringent than those placed on the Authority under this clause 13.

- 13.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the text of the Agreement is not Confidential Information and the Contractor hereby gives its consent for the Authority to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Authority may consult with the Contractor to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA and The Local Government Transparency Code 2014. In addition the Contractor acknowledges that the Authority publishes to the general public (including on its website) all payments the Authority makes over £250 and the Contractor hereby consents to any such payment made in connection with the Services to be so published and acknowledges that such information is not Confidential Information.
- 13.4 The Contractor shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Authority.

14 Freedom of Information

- 14.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
- 14.1.1 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 the Environmental Information Regulations 2004;
 - 14.1.2 transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 14.1.3 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 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - 14.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 14.2 The Contractor acknowledges that the Authority may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Contractor or the Services (including commercially sensitive information) without consulting or obtaining consent from the Contractor. In these circumstances the Authority shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 14.3 Notwithstanding any other provision in the Agreement, the Authority shall be responsible for determining in its absolute discretion whether any Information relating to the Contractor or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

15 Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party. For the avoidance of doubt, but for illustrative purposes only, circumstances beyond the reasonable control of the strikes Party affected shall not include or lockouts by employees.

16 Termination

- 16.1 Without prejudice to any other right or remedy it might have (including without limitation pursuant to clause 18.3), the Authority may terminate the Agreement by written notice to the Contractor with immediate effect if the Contractor:
- 16.1.1 (without prejudice to clause 16.1.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
 - 16.1.2 repeatedly breaches any of the terms and conditions of the 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 and conditions of the Agreement;
 - 16.1.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied;
 - 16.1.4 undergoes a change of control change of control within the meaning of section 1124 of the Corporation Tax Act 2010;
 - 16.1.5 breaches any of the provisions of clauses 13, 14 and 17; or
 - 16.1.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Contractor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Contractor's assets or business, or if the Contractor makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.1.6) in consequence of debt in any jurisdiction.
- 16.2 The Contractor shall notify the Authority as soon as practicable of any change of control as referred to in clause 16.1.4 or any potential such change of control.
- 16.3 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and clauses 1, 6, 8.6, 8.7, 9.1, 10, 12, 13, 14, 16, 17.6, 18, 19, 20, 21, 22 and 23 and any other provision of the Agreement that either expressly or by implication has effect after termination shall continue to have effect.
- 16.4 Upon termination or expiry of the Agreement, the Contractor shall:
- 16.4.1 give all reasonable assistance to the Authority;
 - 16.4.2 immediately deliver to the Authority all copies of information or data provided by the Authority to the Contractor for the purposes of the Agreement. The Contractor shall certify to the Authority that it has not retained any copies of such information or data, except for one copy which the Contractor may use for audit purposes only and subject to the confidentiality obligations in this

Agreement; and

- 16.4.3 immediately deliver to the Authority all specifications and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to and vest in the Authority (to the extent that they have not already done so by virtue of clause 6).

17 Compliance and Insurance

17.1 The Contractor shall perform the Services in accordance with:

- 17.1.1 the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Site in the performance of its obligations under the Agreement; and
- 17.1.2 the Contractor's health and safety policy.

17.2 Without in anyway limiting the other provisions of the Contract the Contractor shall:

- 17.2.1 comply with all relevant codes of practice relating to the Services including those issued by the Health and Safety Executive;
- 17.2.2 ensure all Staff are issued with and, during the provision of the Services, use appropriate personal protective equipment;
- 17.2.3 provide the Services in such a way as to as to eliminate or minimise, so far as is reasonably practicable, any health and safety risks to the Staff, members of the public and any other persons;
- 17.2.4 accept full responsibility for the day-to-day operational aspects of health and safety while performing the Services;
- 17.2.5 inform the Authority immediately of any breaches in health and safety law;
- 17.2.6 co-operate fully with the Authority in its monitoring of health and safety standards;
- 17.2.7 inform the Authority immediately in writing of any health and safety issues relating to the Authority's health and safety responsibilities in relation to the Contract; and
- 17.2.8 inform the Authority in writing of all RIDDOR reportable incidents as soon as possible (including outside normal office hours).

17.3 The Authority may conduct monitoring, reviews and audits of the health and safety arrangements in place in relation to the provision of the Services. The Contractor shall co-operate and shall procure that any relevant sub-contractor co-operates with the Authority in relation to such monitoring, reviews and audits.

17.4 The Contractor shall provide its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) to the Authority on request.

17.5 The Contractor shall:

- 17.5.1 perform its obligations under the Agreement in accordance with all applicable equality law; and
- 17.5.2 take all reasonable steps to secure the observance of clause 17.5.1 by all Staff.

17.6 The Contractor 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:

- 17.6.1 public liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims;
 - 17.6.2 employer's liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims; [and
 - 17.6.3 professional indemnity insurance with a limit of indemnity of not less than £5,000,000]
- (the "**Required Insurances**"). The cover shall be in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss.
- 17.7 The Contractor 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.
 - 17.8 If, for whatever reason, the Contractor 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 Contractor.
 - 17.9 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under or in connection with the Agreement.

18 Prevention of Fraud and Corruption

- 18.1 The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 18.2 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Contractor (including its shareholders, members and directors) in connection with the Agreement and shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 18.3 If the Contractor or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Authority the Authority may:
 - 18.3.1 terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Agreement; or
 - 18.3.2 recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause.
- 18.4 The Contractor shall ensure that its employees and agents are made aware of the Authority's whistleblowing policy and that the details of this policy are fully explained to them, and the Contractor shall provide the Authority with evidence of doing so upon request.
- 18.5 The Authority is under a duty to protect the public funds it administers and consequently may use information about the Contractor which it has acquired for the prevention and detection of fraud. The Authority may share for such purposes all such information with other bodies responsible for auditing or administering

public funds, including as part of the National Fraud Initiative (or any such initiative as may from time to time replace the same).

19 Dispute Resolution

- 19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “**Mediator**”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 19.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.
- 19.4 Nothing in this clause shall preclude either Party referring a dispute between them to adjudication where the Services comprise construction operations within the meaning of the Housing Grants Construction and Regeneration Act 1996 (as amended).

20 General

- 20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

- 20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

21 Notices

- 21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class post or, subject to clause 21.3, e-mail to the address of the relevant Party set out in clause 3, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 21.3 Notices under clauses 15 (Force Majeure), 16 (Termination) and 18 (Prevention of Fraud and Corruption) may be served by email only if the original notice is then sent to the recipient by personal delivery or first class post in the manner set out in clause 21.1.

22 Governing Law and Jurisdiction

The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts.

23 Data Protection

- 23.1 This clause only applies where the Contractor is processing Personal Data on behalf of the Authority as part of, or ancillary to, the Services. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor.
- 23.2 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 23.3 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
- 23.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 23.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 23.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 23.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 23.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 23.4.1 process that Personal Data only in accordance with Schedule 4, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;

- 23.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event which the Authority may reasonably reject (but failure to reject shall not amount to the approval by the Authority of the adequacy of the Protective Measures) having taken account of the:
- (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
- 23.4.3 ensure that :
- (a) the Staff do not process Personal Data except in accordance with this Agreement (and in particular Schedule 4);
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Contractor's duties under this clause;
 - (ii) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 23.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
- (a) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
 - (d) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- 23.4.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
- 23.5 Subject to clause 23.6, the Contractor shall notify the Authority immediately if it:
- 23.5.1 receives a Data Subject Request (or purported Data Subject Request);
 - 23.5.2 receives a request to rectify, block or erase any Personal Data;
 - 23.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- 23.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 23.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 23.5.6 becomes aware of a Data Loss Event.
- 23.6 The Contractor's obligation to notify under clause 23.5 shall include the provision of further information to the Authority in phases, as details become available.
- 23.7 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 23.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
- 23.7.1 the Authority with full details and copies of the complaint, communication or request;
 - 23.7.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 23.7.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 23.7.4 assistance as requested by the Authority following any Data Loss Event;
 - 23.7.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 23.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- 23.8.1 the Authority determines that the processing is not occasional;
 - 23.8.2 the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 23.8.3 the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 23.9 The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.
- 23.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation .
- 23.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- 23.11.1 notify the Authority in writing of the intended Sub-processor and processing;
 - 23.11.2 obtain the written consent of the Authority;
 - 23.11.3 enter into a written agreement with the Sub-Processor which give effect to the terms set out in this clause 23 such that they apply to the Sub-processor; and
 - 23.11.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

- 23.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 23.13 The Contractor may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 23.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 23.15 Where the Parties include two or more Joint Controllers as identified in Schedule 4 those Parties shall enter into a Joint Controller agreement.

Schedule 1
Specification

Schedule 2
Pricing Schedule

Schedule 3
Method Statements

Schedule 4
Personal Data

NOT REQUIRED

This Agreement has been entered into on the date stated at the beginning of this Agreement.

Signed on behalf of the Contractor by

.....
Director

Signed on behalf of Fleet Town Council by

.....
Town Clerk