

Provider Agreement

DATED

TBC

- (1) RUTLAND COUNTY COUNCIL DISTRICT COUNCIL
- (2) TBC

PROVIDER AGREEMENT

For the Provision of the

BUILDING CONTROL SERVICE TO RUTLAND COUNTY COUNCIL

Legal Services
Rutland County Council
Catmose
Oakham
Rutland
LE15 6HP

THIS PROVIDER AGREEMENT is made the X day of Y 2018 BETWEEN

- (1) RUTLAND COUNTY COUNCIL DISTRICT COUNCIL of Catmose, Oakham, Rutland LE15 6HP ("the Council")
- (2) TBC ("the Provider")

WHEREBY IT IS AGREED as follows:-

1. THE SERVICES

The Council hereby agrees to engage the Provider and the Provider hereby agrees to act for the Council in the provision of the Building Control Service as described in the specification set out in the Schedule hereto ("the Services") subject to the terms and on the conditions of this Agreement.

2. DURATION OF AGREEMENT

- 2.1 This Agreement shall commence on [be deemed to have commenced on the XX and shall continue until YY. [a period of 3 yrs.]
- 2.2 The Authority can extend the contract for up to an additional 2 years – either part or in whole prior to the end date identified in 2.1. Such notice will be in writing.

3. PAYMENT

- 3.1 Subject to the Council being satisfied as to the Services provided, the Council shall make payments to the Provider as set out in the tender documents. Such payments shall be exclusive of any Value Added Tax ("VAT") payable which shall be paid by the Council at the rate then in force.
- 3.2 The Provider shall render to the Council monthly invoices and where it is registered for VAT shall show VAT separately on such invoices. The Provider shall keep time-sheets in respect of work performed hereunder and shall if so requested produce them to the Council for accounting purposes.
- 3.3 The Provider fees payable under this Agreement are exclusive of VAT. Any VAT payable in respect of the Provider fees shall be payable in addition to such Provider fees.

4. CONDUCT OF WORK

- 4.1 The Provider shall use its best endeavors to complete the reports and other items of work listed in the Schedule hereto and any other items of work requested by the Council to be provided as part of the Services from time to time within any period stipulated in respect thereof by the Council. The fixing of any such period shall be subject to prior discussion with the Provider.
- 4.2 The Provider shall keep the Council fully informed of its progress in the work comprising the Services (by means of regular written reports if so required by the Council) and shall respond promptly to all enquiries and requests for information made by the Council.
- 4.3 The Provider shall work within the quality framework and procedures applicable to the Services.
- 4.4 The Provider shall work and co-operate with any of the Council's personnel and with any Inspector or Auditor who may be appointed for whatever purpose by the Council or by any other appropriate body.

5. CONFIDENTIALITY

- 5.1 The Provider shall not without the prior written consent of the Council disclose to any third party or make any use other than for the purpose of this Agreement of any information which it obtains from the Council or develops in the course of the provision of the Services. The Provider shall ensure that any person to whom such information is disclosed (including its employees and directors) is aware of and abides by this obligation of confidentiality.
- 5.2 This obligation of confidentiality shall not apply to:-
 - 5.2.1 Information which was already public knowledge at the time of disclosure.
 - 5.2.2 Information which the Provider can show from written records was rightfully in its possession prior to the date of disclosure but shall otherwise survive any termination of this Agreement however caused.

6 DATA PROTECTION AND FREEDOM OF INFORMATION

- 6.1 In relation to all personal data the Provider and the Council shall at all times comply with the Data Protection Act 1998 as a data controller if necessary including maintaining a valid and up-to-date Data notification under the said Act covering the data processing to be performed in connection with the Services
- 6.2 Provided that the Provider is not required to breach or otherwise contravene any legislation the Provider shall use its reasonable endeavors to assist the Council in meeting its statutory obligations

under the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR")

- 6.3 The Provider shall
 - 6.3.1 transfer any request for information within the scope of FOIA or EIR which it receives to the Council as soon as practicable after receipt and in any event within two working days of receipt
 - 6.3.2 provide the Council with a copy of all information in its possession or power in the form that the Council requires within five working days (or such other period as the Council may specify) of the Council requesting that information and
 - 6.3.3 provide all necessary assistance as reasonably required by the Council to enable the Council to respond to a request for information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR

- 6.4 The Council shall be responsible for determining at its absolute discretion whether commercially sensitive information and/or any other information
 - 6.4.1 is exempt from disclosure in accordance with the provisions of FOIA or EIR
 - 6.4.2 is to be disclosed in response to a request for information and
in no event shall the Provider respond directly to a request for information unless expressly authorised to do so by the Council

- 6.5 The Provider acknowledges that the Council may be obliged under FOIA or EIR to disclose information
 - 6.5.1 without consulting with the Provider or
 - 6.5.2 following consultation with the Provider and having taken its views into account

- 6.6 The Provider shall ensure that all information produced in the course of this contract or relating to this contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time

6.7 The Provider acknowledges that any lists or schedules provided by it outlining confidential information are of indicative value only and that the Council may nevertheless be obliged to disclose confidential information in accordance with clause 8.5

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 All inventions discoveries designs improvements information and copyright works (together "Inventions") made or produced by the Provider in the course of performing its obligations under this Agreement shall belong to the Council.
- 7.2 The Provider shall promptly disclose to the Council full details of all Inventions and shall at the request and expense of the Council do all things necessary to enable the Council or its nominee to obtain the benefit of and to secure patent or other protection for such Inventions.
- 7.3 Except for the purposes of this Agreement the Provider shall not disclose or make use of any Invention without prior written consent of the Council.
- 7.4 All documents and other work prepared by the Provider for the Council shall become the Council's property (save in respect of the Provider's own working papers) and on request (without prejudice to the provisions of Clause 8.3) the Provider shall deliver up to the Council all such documents and work.

8. TERMINATION

- 8.1 The Council may terminate this Agreement by **three** calendar month's notice in writing to the Provider. The contract will not be terminable in any other way except as provided below.
- 8.2 The Council may terminate this Agreement forthwith by notice in writing to the Provider if:-
- 8.2.1 the Provider shall have offered, or given, or agreed to give to any person any gift, or consideration of any kind as an inducement or reward for doing, or forbearing to do, or having done or forborne to do any Agreement, or any other contract with the Council, or for showing or forbearing to show favour, or disfavour, to any person in relation to this Agreement, or any other acts shall have been done by any person employed by the Provider, or acting on the Provider's behalf (whether with or without the knowledge of the Provider), or any other agreement with the Council, the Provider or any person employed by the Provider, or acting on the Provider's behalf, shall

have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward to any Member or officer of the Council, which shall have been exacted or accepted by such Member or Officer by virtue of office or employment and is otherwise than such member or Officer's proper remuneration, the Authority shall be entitled to terminate this Agreement and to recover from the Provider the amount of any loss resulting from such termination;

- 8.2.2 the Provider commits a breach of any of the provisions of this Agreement and fails to remedy such breach within 14 days of receiving notice from the Council requiring it to do so;
- 8.2.3 becomes bankrupt, or makes a composition or arrangement with its creditors, or has a proposal in respect of its company for voluntary arrangement for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986;
- 8.2.4 has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver;
- 8.2.5 has a winding-up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
- 8.2.6 has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;
- 8.2.7 has an administrative receiver, as defined in the Insolvency Act 1986, appointed;
- 8.2.8 has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge;
- 8.2.9 is in circumstances which entitle the court or a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver, or which entitle the court to make a winding-up order;
- 8.2.10 Performance - the Service Provider consistently fails to address service failures brought to his attention by the Supervising Officer.

- 8.3 On the termination of this Agreement (however caused) the Provider shall surrender to the Council within 14 days of the Council's request all drawings plans correspondence notes and other original and copy documents (including print-outs of all information stored on any computer system) relating to the work done in the course of the provision of the Services and shall delete any such information stored on any computer system.
- 8.4 The Council shall cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of this Agreement shall have been calculated and provided that such calculation shows a sum or sums due to the Provider.
- 8.5 The Council shall be entitled to deduct from any sum or sums due from the Council to the Provider under this agreement or any other agreement or be entitled to recover the same from the Provider as a debt, any loss or damage to the Council resulting from or arising out of the termination of this Agreement. Such loss or damage shall include the cost to the Council of the time spent by its Officers in terminating this Agreement.
- 8.6 The rights of the Council under Clause 8 are in addition to and without prejudice to any other rights the Council may have.

9. NATURE OF RELATIONSHIP

- 9.1 Nothing in this Agreement shall render the Provider an employee, agent or partner of the Council and the Provider shall not hold itself out as such. The Provider shall not pledge the credit of the Council nor sign any document enter into any agreement or make any promise on behalf of the Council.
- 9.2 The Provider shall be solely responsible for accounting to the appropriate authorities for any income tax corporation tax value added tax and social security contributions payable on the fees paid by the Council in respect of the provision of the Services.

10. LIABILITY & INSURANCE

- 10.1 The Contractor shall at all times maintain in force such policies of insurance with reputable insurers or underwriters approved by the Council as shall fully insure and indemnify the Contractor against liability:

(i) to the Council and to any employee of the Council

(ii) to the employees of the Contractor;

(iii) to any other person

In the sum of at least £5 million.

- 10.2 The Contractor shall, prior to the commencement of the Contract supply the Supervising Officer with copies of all insurance policies, cover notes, premium receipts and other documents necessary to comply with paragraph 10.1 above, that is: evidence of Public Liability insurance in the sum of at least £5,000,000 and Employers Liability Insurance in the sum of at least £5,000,000 (Employers Liability of this sum is a legal requirement).
- 10.3 The Supervising Officer shall be entitled to notify the Contractor in writing that in the opinion of the Supervising Officer any such policy of insurance does not effect sufficient cover to comply with the Conditions and to require the Contractor to effect such insurance as will so comply. Upon receipt of such notice, the Contractor shall forthwith procure and effect such insurance as the Supervising Officer shall require.
- 10.4 The Provider shall take out at its own cost and maintain an appropriate policy of professional indemnity insurance to cover any liability which it may incur to the Council in connection with this Agreement (including without limitation any liability under Clause 10.1 above) which policy shall provide cover of at least £1,000,000 in such respect. The Provider shall provide to the Council on request proof of the existence of such policy and payment of premiums hereunder.

11. ASSIGNMENT

This Agreement is personal to the Provider who shall not assign, sub-contract or delegate the whole or any part of its rights or obligations hereunder.

12. ENTIRE AGREEMENT

This Agreement supersedes all previous agreements or arrangements between the parties relating to the subject-matter hereof and no variation of its terms shall be binding unless in writing signed by or on behalf of each party.

13. NOTICES

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered by hand or by first class letter and shall be deemed to have been served if by hand when delivered if by first class post forty-eight hours after posting.

14. WARRANTY

Each of the parties warrants its power to enter into this Agreement and has obtained all necessary approvals to do so.

15. SEVERANCE

If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable then such provision shall be severed and the remainder of this Agreement shall continue in full force and effect.

16. SUPERSEDES PRIOR AGREEMENTS

This Agreement supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the Commencement Date but without prejudice to any rights which have already accrued to either of the parties.

17. CHANGE OF ADDRESS

Each of the parties shall give notice to the other of the change or acquisition of any address or telephone or similar number at the earliest possible opportunity but in any event within 48 hours of such change or acquisition.

18. HEADINGS

Headings contained in this Agreement are for reference purposes only and should not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the clauses to which they relate.

19. JOINT AND SEVERAL

19.1 All agreements on the part of either of the parties which comprise more than one person or entity shall be joint and several and the neuter singular gender throughout this Agreement shall include all genders and the plural and the successor in title to the parties.

19.2 The Council and the Provider shall not assign, sub-contract or transfer this Agreement or any part hereof or any rights or duties hereunder to any third party. For the purpose of this Agreement the assumption of the contractual obligations hereunder by any successor body, organisation or Local Authority to the Council which is created as a result of Government statute or regulation shall not constitute an assignment or transfer of this Agreement.

20. PROPER LAW AND JURISDICTION

20.1 This Agreement shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England.

20.2 Any proceedings arising out of or in connection with this Agreement may be brought in any court of competent jurisdiction.

20.3 Any notice of proceedings or other notices in connection with or which would give effect to any such proceedings may without prejudice to any other method of service be served on any party in accordance with clause 13.

21. RIGHTS CUMULATIVE

All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any right under this Agreement shall restrict or prejudice the exercise of any other right granted by this Agreement or otherwise available to the exercise of any other right granted by this Agreement or otherwise available to it.

22. WAIVER

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

23. COSTS

Each of the parties shall pay any costs and expenses incurred by it in connection with this Agreement.

24. ARBITRATION

All disputes or differences which shall at any time arise between the parties whether during the Term or afterwards touching or concerning this Agreement or its construction or effect or the rights duties or liabilities of the parties under or by virtue of it or otherwise or any other matter in any way connected with or arising out of the subject matter of this Agreement shall be referred to a single arbitrator to be agreed upon by the parties or in default of agreement to be nominated by the President for the time being of the Chartered Institute of Arbitrators in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it for the time being in force.

25. CERTIFICATION

Within 28 days of the date of delivery to the Supervising Officer or his

representative of the monthly statement by the Contractor, the Supervising Officer shall certify and the Council shall pay to the Contractor (after deducting any previous payment on account) the amount which, in the opinion of the Supervising Officer on the basis of the monthly statement is due to the Contractor including the sum (if any) to be added by way of Value Added Tax and the sum (if any) to be deducted by way of Income Tax.

THE SCHEDULE

Schedule One - Detailed Description of Services

Schedule One -Detailed Description of Services

1 Summary of requirements

The Service Provider will:

- 1.1 Deal with all types of deposited applications to include: Full Plans, Building Notices and Initial Notices, for compliance with regulations and relevant legislation. Identify where structural or other specialist advice is required and bring this to the attention of the applicant.
- 1.2 Engage structural engineers as necessary to provide advice on applications. Only structural engineers approved by the Client will be used and their rates must have been agreed with the Supervising Officer. All charges made by specialist advisors, such as structural engineers will be borne by the Council provided that prior agreement has been sought from the Supervising Officer.
- 1.3 Undertake regular and thorough inspection of building work to secure compliance with the Building Regulations, Building Act 1984 and all other regulations in force within the jurisdiction of the Building Control section. This requirement applies equally to fee earning work and non-fee earning work, for example, applications for adaptations for disabled persons.
- 1.4 Investigate and record all unauthorised building work and report promptly to the Supervising Officer any problems relating to building work. The Service Provider will need to ensure that this non-fee earning element of the service is allowed for in the tendering process and included within the overall rates..
- 1.5 Record on the section's computer system all inspections made, with dates and any other relevant information.
- 1.6 Maintain a record of building work in progress.
- 1.7 Attend to routine enquiries made in person or by telephone.
- 1.8 Inspect and report upon proposals not proceeded with after three years.
- 1.9 Study new legislation affecting building control and keep abreast of current trends in building control and related matters.
- 1.10 Provide information to the public and any other interested parties as necessary.

1.11 Dangerous Structures

- 1.11.1 Investigate and report to the Contracts and Support Services Manager on dangerous structures, act on instructions given and maintain the section's computer records relating to these.
- 1.11.2 Maintain periodically inspections as necessary or as directed by the Supervising Officer until danger is removed.
- 1.11.3 Observe all existing buildings, so far as possible, for signs of danger and carry out detailed inspections as necessary. When necessary or required, the Service provider will be required to draft Dangerous Structure Notices under the provisions of the Building Act. (Notices can only be signed by the Supervising Officer or his Nominated Representative).
- 1.11.4 The Service Provider will need to provide and maintain an emergency service to the Council for this purpose. This element of the service will be required to be available 24 hours a day 365 days a year in the event of emergencies. Payment for this service when it occurs outside the hours 8.30am to 5pm on any normal working day will be at the hourly rates specified in the tender.

1.12 Demolitions

- 1.12.1 Deal with applications for demolition as required by the Supervising Officer.
- 1.12.2 Inspect demolition works in progress and ensure the work is in order and the imposed conditions are being followed.

1.13 Attend and contribute to meetings as required by the Supervising Officer.

1.14 To undertake any other relevant duties of a similar nature and level for the effective operation of the service as may be required from time to time.

1.15 Anticipated Workload

1.16 This is a demand driven service and as a result it is not possible to fully define the level of service that will be required as part of this contract and therefore no guarantees can be provided as to the volume

1.17 Whilst the number of service requests will vary the historical record is set out below but these should be considered as indicative only :

Date	Average No. of Requests per month
FY15/16	40
FY16/17	44
FY17/18 (Sept 2017)	47

2 The Council's Working Arrangements with the Service Provider

- 2.1 The Service Provider will be based at the Council Offices, Catmose, Oakham, Rutland. All essential IT & telephony requirements shall be supported & provided by the Council. There is no requirement for a continual presence in the office but the service provider will be required to be available 24 hours a day 365 days a year to meet the requirements of this 'Description of Services'.
- 2.2 The Council will provide administrative support services for the function detailed in the specifications, in the form of 1.0 FTE administrative support staff.
- 2.3 Overall responsibility for the service will lie with the Council's Supervising Officer.
- 2.4 All invoices to service users will continue to be raised by the Council and all monies owing will be paid directly to the Council by its service users.
- 2.5 The Council will be responsible for any overdue invoices.
- 2.6 A monthly report of all Building Control fee income invoiced will be generated by the Council and issued to the Service Provider for its information.
- 2.7 The Council will pay the service provider the agreed percentage of all application fees on a monthly basis, plus any further charges specified in the tender documents for any non-fee earning work.
- 2.8 An initial contract meeting between the service provider and the Council's Supervising Officer will be required at the outset of the service to agree methods of working reporting and payment schedules.
- 2.9 The service provider will ensure that the work undertaken and the outputs produced meet the Council's requirements, and that the service meets statutory and good practice guidance. The Service Provider will be required to implement and maintain an appropriate level of quality control.
- 2.10 If at any stage the Council considers that the Service Provider is not meeting the Council's requirements then the matter will be the subject of a meeting between the Council and the Service Provider in order to seek resolution. If the matter cannot be resolved to the agreement of both parties or if the problem were to re-occur then the Council would be entitled to terminate the contract.
- 2.11 The service provider must ensure that they do not have any other

contracts where there would be a conflict of interest between the Building Control Service and that other contract.

- 2.12 The Council has a planning software system which incorporates building control and land charges. This system is currently provided by Agile Solutions Ltd via a hosted model. The council will be transferring to a new software system (IDOX) which will be hosted by South Kesteven District Council (SKDC). We expect that the transfer to IDOX will be completed by the end of May 2018. The supplier will be expected to use the IDOX application and work with SKDC and RCC to ensure access to the system works

3 Performance Targets

Performance targets to this contract are as follows:

- 3.1 Dangerous structures – The Service Provider will aim to be on-site within 2 hours following receipt of the initial call.
- 3.2 Plan checking- within five weeks of receipt. Eight weeks will apply where the applicant has not ticked the opt-out box on the application form. A further extended period may be negotiated with the applicant in writing where necessary.
- 3.3 Site inspections – Inspections shall be undertaken the same day when the inspection request is received before 10:00hrs. Requests received after 10:00 hrs. shall be entertained on the next working day unless the customer has requested a later date.
- 3.4 Correspondence Letters, faxes and emails shall be acknowledged within 2 working days and a full response sent within 10 working days.
- 3.5 Telephone calls – Calls shall be taken whenever the Service Provider has staff available in the office or, in the event that the Service Provider is not available, returned the same working day where possible.

4 Information to be provided by the Service Provider

In addition to any requirements referred to elsewhere in this document the Service Provider is required to provide:

- 4.1 A full breakdown of how the Building Control service will be provided. This will include 'out of hours' support for dangerous structures.
- 4.2 Details of their expertise in Building Control and all relevant professional qualifications held by members of their staff.
- 4.3 Minimum levels of staff who will be available at any one time.
- 4.4 Details of the company, including previous and current commissions.
- 4.5 The names, addresses and email addresses of at least two appropriate referees.

- 4.6 Details of the Service Provider's own internal method of quality control to ensure that the work undertaken and the output produced meet the client's requirements, in particular to ensure that the service meets statutory and good practice guidance.
- 4.7 Details of any additional costs which may be incurred by the Service Provider and recharged to the Council and which are considered to be outside the general scope of providing the service.

All prices/costs should be exclusive of Value Added Tax.

IN WITNESS whereof a duly authorised representative of the Council and the Provider have executed this Agreement on the day and year first written.

SIGNED for and on behalf of RUTLAND COUNTY COUNCIL DISTRICT COUNCIL

Chief Executive _____

Witnessed by _____

SIGNED for and on behalf of [insert company name]

Signed _____

Position in company _____

Witnessed by _____

GUARANTEE

SIGNED on behalf of the Employer
by JAMES FRIELAND,
CONTRACTS & SUPPORT SERVICES MANAGER