

**DRAFT ONLY**

**[Maidstone] BOROUGH COUNCIL**

**and**

**Cobtree Manor Estate Trust**

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**SERVICES AGREEMENT**

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Relating to

Mid Kent Legal Services  
Maidstone Borough Council  
Ref:

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**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 201\_

**BETWEEN:**

- (1) **MAIDSTONE BOROUGH COUNCIL** of (the "**Service Provider**"); and
- (2) COBTREE MANOR TRUST whose registered office is situated at (the "**The Trust**").<sup>1</sup>

**WHEREAS:**

- (A) Maidstone Borough Council (the "Authority") is the corporate trustee of the Cobtree Manor Estate Charity (the "Trust") and provides administrative support to the Trust through work done by Council officers
- (B) Further to a decision by the Trust on the [ ] 20[ ] it was resolved that **an agreement between the Trust and Service Provider be drawn up to define the scope of the services to be provided by Service Provider to the Trust.**
- (B) Service Provider has agreed to provide the Services to the Trust on the terms and conditions set out in this Agreement.

**NOW IT IS HEREBY AGREED:**

**1. DEFINITIONS**

In the Agreement (including the Recitals):

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

- "Agreement"** means this Agreement, including the Schedules and all other documents referred to in this Agreement;
- "Agreement Commencement Date"** means the date for commencement of this Agreement specified in **Schedule 1**;
- "Trust's Data"** means all information and documentation provided by the Trust to Service Provider pursuant to and in connection with this Agreement;
- "Charges"** means the charges payable by the Trust, in consideration of the due performance of the Services, as specified or calculated in accordance with **Schedule 3**;
- "Confidential Information"** means all information (whether written or oral) that by its nature may reasonably be regarded as

<sup>1</sup> Where the Service Provider is not a limited company refer to Legal Services for advice as to appropriate Attestation (page .

confidential by the Trust (whether commercial, financial, technical or otherwise) including information which relates to the business affairs, customers, suppliers, products, and/or software, telecommunications, networks, trade secrets, know-how or personnel of the Trust;

**"Contract Information"**

- (i) this Agreement in its entirety (including from time to time agreed changes to the Agreement); and
- (ii) data extracted from the invoices submitted pursuant to Clause 5 which shall consist of Service Provider's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;

**"Contract Manager"**

means Service Provider's Contract Manager identified in **Schedule 1**.

**"FOI Legislation"**

means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department for Constitutional Affairs or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

**"Force Majeure Event"**

means any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event ("**Affected Party**") to perform its obligations in accordance with the terms of this Agreement but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent

	such Force Majeure Event or its impact;
<b>"Information"</b>	means information recorded in any form held by Service Provider or by the Service Provider on behalf of the Trust;
<b>"Information Request"</b>	means a request for any Information under the FOI Legislation;
<b>"Intellectual Property Rights"</b>	means any patent, know-how, trade mark or name, service mark, design right (in each case whether registered or unregistered), copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;
<b>"Key Personnel"</b>	means Service Provider's key personnel named as such in <b>Schedule 1</b> ;
<b>"Losses"</b>	means all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments;
<b>"Parties"</b>	means Service Provider and the Service Provider (including their successors and permitted assignees) and <b>"Party"</b> shall mean either of them as the case may be;
<b>"Prohibited Act"</b>	means the offering or giving to any person, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done, any act in relation to the obtaining or execution of this Agreement except in the respect of payments made to the Service Provider in the normal course of this Agreement; or showing or forbearing to show, favour or disfavour to any

person in relation to this or any other contract with Service Provider; or in relation this Agreement; or committing any offence under the Bribery Act 2010 or any related legislation or any of the money laundering related offences listed in the Public Agreement Regulations 2006 or giving any fee or reward, the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972.

**"Project Plan"**

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

**"Services"**

means:

- (a) all or any part of the services to be provided to, or activities to be undertaken and completed for, Service Provider by the Service Provider in **Schedule 2** and in the Tender (provided that where there is a conflict between Schedule 2 and the Tender set out in Schedule 5, Schedule 2 shall prevail), including any variations to such services and/or activities pursuant to Clause 40; and
- (b) any responsibilities, services, or functions which may be reasonably regarded as incidental to the Services or activities and which may be reasonably inferred;

**"Service Provider's Personnel"**

means all such employees, officers, suppliers, sub-contractors and agents of Service Provider as are engaged in the performance of any of the Services and including the Key Personnel;

**"Service Provider's Representative"**

means all such employees, officers, suppliers, sub-contractors and agents of Service Provider as are engaged in the performance of any of the Services and including the Key Personnel;

**"Specification"**

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

**"Sub-Contract"**

means any contract between Service Provider and a third party pursuant to

which Service Provider agrees to source the provision of any of the Services from that third party.

**"Sub-Contractor"**

means the contractors or suppliers that enter into a Sub-Contract with the Service Provider.

**"Term"**

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

**"VAT"**

means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature

**"VAT Invoice"**

VAT Invoice means Service Provider's invoice, displaying Service Provider's VAT registration number and detailing the applicable VAT element(s) to be added to the agreed charges for the goods and service delivered under this Agreement

**"Working Day"**

means any day excluding Saturdays, Sundays or public or bank holidays in England.

**2. COMMENCEMENT AND DURATION**

This Agreement commences on the Agreement Commencement Date and continues in force for the Term unless terminated earlier, either in whole or in part, in accordance with this Agreement.

**3. SERVICES**

3.1 Service Provider acknowledges that it has sufficient information about Trust, the Services and the Specification (if any) and that it has made all appropriate and necessary enquiries to enable it to perform the Services.

3.2 Service Provider shall provide the Services:

3.2.1 with the high degree of skill, care and diligence in compliance with the terms of this Agreement; and

3.2.2 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner.

3.3 Service Provider shall comply with all lawful and reasonable directions of the Trust relating to its performance of the Services.

**4. CHARGES**

- 4.1 Service Provider shall invoice the Trust in accordance with the procedures set out in Clause 5 and in consideration of, and subject to the due performance of the Services and the Trust shall pay Service Provider the Charges in accordance with those procedures.
- 4.2 Service Provider is not entitled to reimbursement for expenses unless such expenses are specified in **Schedule 3** or have been incurred with the prior written consent of the Trust, in which case Service Provider shall supply appropriate evidence of expenditure in a form acceptable to Trust
- 4.3 [Save where the context so requires or as otherwise stated herein all costs charges or payments required to be made under or pursuant to this Agreement are exclusive of VAT and insofar as such costs, charges or payments are made or to be made in respect of the supply of goods or services which are subject to the addition of Value Added Tax then the applicable amount of such Value Added Tax shall be added to such costs, charges or payments and shall become payable against the provision of a valid VAT Invoice.]<sup>3</sup>
- 4.4 Service Provider shall submit a valid VAT Invoice for goods and services delivered pursuant to the Trusts's requirements under this contract. The valid VAT Invoice shall be payable in accordance with the provision of this Agreement.

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

- 5.1 [Service Provider shall invoice the Trust in respect of the Charges monthly in arrears] during or at such dates or at the end of such other periods as may be specified **Schedule 3**.
- 5.2 It is a condition precedent of the submission of an invoice on completion of a milestone that all preceding milestones specified in **Schedule 2** have been completed.
- 5.3 Service Provider shall submit invoices to the address set out in **Schedule 1**, each such invoice shall contain all information required by Service Provider including Service Provider's Account Details, Service Provider's name and registered address, VAT registration number, a separate calculation of VAT and a brief description of the Services provided. Invoices shall be clear, concise, accurate, and adequately descriptive to avoid delays in processing subsequent payment.
- 5.4 In the event of a variation to the Services in accordance with this Agreement that involves the payment of additional fees or charges to Service Provider, Service Provider shall identify these separately on the relevant invoice.
- 5.5 If the Trust considers that the Charges claimed by Service Provider in any invoice have:
- 5.5.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System (BACS)) or such other

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<sup>3</sup> Please ensure the Service or Commissioner of works has confirmed that VAT is applicable to the arrangement, that Supplier is VAT registered and the registration number has been provided

method as Service Provider may choose from time to time within 30 days of receipt of such invoice or such other time period as may be specified in **Schedule 3**; or

- 5.5.2 not been calculated correctly and/or if the invoice contains any other error or inadequacy, Service Provider shall notify the Service Provider and the Parties shall work together to resolve the error or inadequacy. Upon resolution, the Service Provider shall submit a revised invoice to Service Provider.
- 5.6 No payment made by the Trust (including any final payment) or act or omission or approval by the Trust or its Contract Manager (whether related to payment or otherwise) shall:
  - 5.6.1 indicate or be taken to indicate the Trust's acceptance or approval of the Services or any part of them or any act or omission of Service Provider, or otherwise prejudice any rights, powers or remedies which Trust may have against Service Provider or absolve Service Provider from any obligation or liability imposed on Service Provider; or
  - 5.6.2 prevent the Trust from recovering any amount overpaid or wrongfully paid including payments made to Service Provider by mistake of law or fact. The Trust shall be entitled to withhold such amount from any sums due or which may become due to Service Provider or the Trust may recover such amount as a debt due under this Agreement.

5.7 Where Service Provider enters into a Sub-Contract, Service Provider shall include in that Sub-Contract:

- 5.7.1 provisions having the same effect as Clause 5.5.1 to [Clause 5.5.2](#) of this Agreement; and
- 5.7.2 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 5.5.1 to [Clause 5.5.2](#) of this Agreement.

In this [Clause 5.7](#), "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from Service Provider in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

## **6. SERVICE PROVIDER'S WARRANTIES**

- 6.1 The Service Provider warrants and represents that:
  - 6.1.1 it has the full capacity and has taken all steps and obtained all approvals, consents and licences required to enable it to lawfully enter into and perform each of its obligations under this Agreement;
  - 6.1.2 this Agreement shall be executed by its duly authorised representatives;

- 6.1.3 the information supplied by the Service Provider in the Tender is true and accurate in all material respects;
- 6.1.4 there are no material facts or circumstances in relation to the financial position or operational constitution of the Trust which have not been fully and fairly disclosed to Service Provider and which, if disclosed, might reasonably have been expected to affect the decision of Service Provider to enter into this Agreement; and
- 6.1.5 it has not committed any Prohibited Act.

## **7. CONTRACT MANAGEMENT**

- 7.1 The Trust authorises its Contract Manager to act as its Authorised Representative for all purposes in connection with this Agreement and Service Provider shall deal with the Contract Manager (or his or her Nominated Representative) in respect of all matters arising under this Agreement.
- 7.2 Service Provider shall appoint a Representative who shall be duly authorised for all purposes in connection with this Agreement and Service Provider shall provide the Key Personnel. Service Provider's Representative and the Key Personnel shall:
  - 7.2.1 diligently supervise the performance of the Services;
  - 7.2.2 attend all contract meetings with the Trust the location, frequency and time of which may be specified by the Contract Manager; and
  - 7.2.3 be available to the Trust to resolve any issues arising in connection with this Agreement at such time periods as may be specified by the Contract Manager.
- 7.3 Service Provider may only make any changes to Service Provider's Representative or Key Personnel (except in the event of sickness, incapacity or resignation) with the prior consent of the Trust which shall not be unreasonably withheld.
- 7.4 No act of or omission by or approval from the Trust or its Contract Manager in performing any of their respective duties under or in connection with this Agreement shall in any way operate to relieve Service Provider of any its duties, responsibilities, obligations or liabilities under this Agreement.

## **8. HEALTH AND SAFETY**

- 8.1 Service Provider shall have regard to applicable Safety policies, and safe working practices in the provision of the Services, and shall ensure that all Health and Safety matters arising from the provision of the Services under this Agreement are dealt with in accordance with the the Health and Safety at Work Act 1974.
- 8.3 The Trust shall nominate a senior manager to be responsible for ensuring that all Health and Safety matters arising from the provision of the Services under this Agreement are dealt with in accordance with the the Health and Safety at Work Act 1974.

8.4 Service Provider shall conduct the Services so as to eliminate or minimise so far as is reasonably practicable any health and safety risks to members of the public, the Trust's employees and other staff carrying out the Services.

**9. STAFF AND KEY PERSONNEL**

**9.1 Service Provider's Staff**

9.1.1 Service Provider shall at all times during the Term ensure that its employees engaged in the provision of the Services have sufficient skill and ability and have been properly trained in order to carry out the Services in accordance with this Agreement;

9.1.2 Service Provider shall at all times be fully responsible for the payment of all income or other taxes national insurance contributions or levies of any kind relating to or arising out of the employment of any person engaged by Service Provider in the performance of the Services and shall indemnify Service Provider in respect of any liabilities which may arise to Service Provider as a result of the failure by Service Provider to comply with the obligation in this Clause 9.1.2.

**10. EQUIPMENT AND MATERIALS**

10.1 Regardless of whether or not Service Provider's equipment and materials are located at the Trust's premises, risk in all Service Provider's Equipment and Materials (including any of its sub-contractors) shall be with Service Provider at all times and all other equipment and materials forming part of the Services (title to which will pass to Service Provider) shall be with Service Provider until payment of the Services in accordance with this Agreement.

10.2 Service Provider shall ensure that all its equipment and materials meet all minimum safety standards required from time to time by law.

## **11. PERFORMANCE AND MONITORING**

### **11.1 Performance Standards**

Service Provider shall throughout the Term perform the Services so as to meet the minimum performance standards set out for the Services in **Schedule 2 and/or Schedule 4 and/or Schedule 5**.

### **11.2 Review and Monitoring of Performance<sup>4</sup>**

The performance of the Services shall be subject to monitoring by Service Provider and through the performance management and monitoring procedure which may set out in **Schedule 2** or otherwise agreed between the Contract Manager and Service Provider's Representative.

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

12.1 The Service Provider shall and shall procure that its sub-contractors shall:

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

12.1.2 retain all Records during the Term and for a period of not less than 6 years (or such longer period as may be required by law) following termination or expiry of this Agreement ("**Retention Period**").

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

## **13. SET-OFF**

The Trust shall be entitled at any time to set off any liability of Service Provider to the Trust against any liability of the Trust to Service Provider.

## **14. INDEMNITIES**

14.1 Subject to Clause 14.2, Service Provider is responsible for and shall indemnify, keep indemnified and hold harmless Service Provider (including its employees, sub-contractors and agents) ("**the Indemnified Party**") against all Losses which the Indemnified Party incurs or suffers as a consequence of any direct or indirect breach or any negligent performance of this Agreement by Service Provider (or any of its employees, agents or sub-contractors) including in each case any non-performance or delay in performance of this Agreement or of any breach of statutory duty,

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<sup>4</sup> Standards and Performance management regime to be set out in Schedule 2 including KPIs.

misrepresentation or misstatement by the Service Provider or any of its employees or sub-contractors.

- 14.2 The Trust is not responsible for and shall not indemnify Service Provider for any Losses to the extent that such Losses are caused by any breach or negligent performance of any of its obligations under this Agreement by Service Provider and/or any of its employees or agents.
- 14.3 Notwithstanding any other provision of this Agreement, neither Party limits or excludes its liability for fraud or fraudulent misrepresentation or for death or personal injury caused by its negligence.

## **15. INSURANCE<sup>5</sup>**

- 15.1 The Service Provider shall at all times have in force with reputable insurers or underwriters, approved by Service Provider, the following insurances for the period of the Term of this Agreement:
- 15.1.1 Public liability insurance with a limit of indemnity of not less than **£5 million** in relation to any one claim;
  - 15.1.2 Employers liability insurance with a limit of indemnity of not less than **£10 million** in relation to any one claim;
  - 15.1.3 Professional indemnity insurance with a limit of indemnity of not less than **£2 million** or, where professional indemnity insurance is not available, a "financial loss" extension to the product liability insurance referred to in Clause 15.1.4;
  - 15.1.4 Product liability insurance with a limit of indemnity of not less than **£5 million** in relation to any one claim; and
  - 15.1.5 All other insurances required by law.
- 15.2 Service Provider shall notify the Contract Manager as soon as reasonably practicable upon the notification of any event which may give rise to a claim of more than ten thousand pounds (£10,000) sterling.
- 15.3 Service Provider shall, prior to the Commencement Date of this Agreement and at any other reasonable times as the Contract Manager may require supply the Contract Manager with evidence of all of the insurance policies referred to in clause 15.1.

## **16. AUTHORITY'S DATA**

- 16.1 Service Provider acknowledges the Trust's ownership of Intellectual Property Rights which may subsist in the Trust's Data. Service Provider shall not delete or remove any copyright notices contained within or relating to Service Provider's Data.
- 16.2 The Trust and Service Provider shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the Trust's Data and to prevent any corruption or loss of Service Provider's Data.

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<sup>5</sup> Confirm with Insurance advisor the type and level of Insurance cover required and any special terms in relation to the Services.

## **17. INTELLECTUAL PROPERTY RIGHTS**

- 17.1 Save as the Parties may otherwise agree (in writing), Service Provider hereby assigns with full title guarantee to the Trust all Intellectual Property Rights in all documents, drawings, computer software and any other work or data prepared or developed by and on behalf of Service Provider in the provision of the Services ("**the Products**") provided that such assignment shall not include items not prepared or developed specifically for the purposes of providing the Services.
- 17.2 Service Provider shall provide the Trust with copies of all materials relied upon or referred to in the creation of the Products with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such materials in connection with the use of the Products.

## **18. PERSONAL DATA**

- 18.1 Each party shall ensure that it complies with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data, including, without limitation, (i) the Data Protection Act 2018, (ii) the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and (iii) any successor legislation to the Data Protection Act 2018 and the GDPR.

## **19. CONFIDENTIALITY**

- 19.1 Subject to Clauses 18 and 19.6, the Service Provider shall keep confidential:
- 19.1.1 the terms of this Agreement and any agreed variation thereto; and
- 19.1.2 all Confidential Information that it may acquire in relation to Service Provider.
- 19.2 The Service Provider will not use Service Provider's Confidential Information for any purpose other than to perform its obligations under this Agreement. The Service Provider will ensure that its officers, employees and sub-contractors will comply with the provisions of Clause 19.1.
- 19.3 The obligations of the Service Provider set out in Clause 19.1 shall not apply to any Confidential Information which:
- 19.3.1 either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 19); or
- 19.3.1 a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure.
- 19.4 The Service Provider shall keep secure all data and materials containing any information in relation to the Agreement and its performance.
- 19.5 The Service Provider shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of the Agreement or that it is providing

the Services to Service Provider or in relation to any matter under or arising from the Agreement unless granted consent in writing by Service Provider. Service Provider shall have the right to approve any public announcement before it is made.

- 19.6 Service Provider may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing, and in its absolute discretion, Service Provider may take account of the exemptions that would be available in relation to information requested under the FOI Legislation. Service Provider may, in its absolute discretion, consult with the Service Provider regarding any redactions to the Contract Information to be published pursuant to this Clause 19.6. Service Provider shall make the final decision regarding publication and/or redaction of the Contract Information.

## **20. FREEDOM OF INFORMATION**

- 20.1 The Service Provider acknowledges that the Trust:

20.1.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Trust to enable the Trust to comply with its obligations under the FOI Legislation; and

20.1.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.

- 20.2 Without prejudice to the generality of Clause 20.1, the Service Provider shall and shall procure that its sub-contractors (if any) shall:

20.2.1 transfer to the Contract Manager (or such other person as may be notified by Service Provider to the Service Provider) each Information Request relevant to this Agreement or the Services that it or they (as the case may be) receive as soon as practicable and in any event within 2 Working Days of receiving such Information Request; and

20.2.2 in relation to Information held by the Service Provider on behalf of Service Provider, provide Service Provider with details about and/or copies of all such Information that Service Provider requests and such details and/or copies shall be provided within 5 Working Days of a request from Service Provider or such other period and in such forms as Service Provider may reasonably specify.

- 20.3 Service Provider shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Service Provider shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Trust.

## **21. TERMINATION**

- 21.1 Without prejudice to Service Provider's right to terminate at common law, the Trust may terminate this Agreement immediately upon giving notice to the Service Provider, if the Service Provider:

21.1.1 has committed any material or persistent breach of this Agreement and, in the case of such a breach that is capable of remedy fails to

remedy that breach within 10 Working Days (or such other period as specified in writing by Service Provider) from the date of written notice to the Service Provider giving details of the breach and requiring it to be remedied; or

21.1.2 ; or

21.1.3 commits a breach of Clause 6 (Service Provider's Warranties); or

21.1.4 commits a breach of Clause 19 (Confidentiality); or

21.1.5 commits a Prohibited Act; or

21.1.6 commits a breach of Clause 34 (Assignment and Sub-Contracting)

## 21.2 **Force majeure**

21.2.1 Neither Party shall be in breach of any obligation under this Agreement if it is unable to perform that obligation in whole or in part by reason of a Force Majeure Event.

21.2.2 If either Party seeks to rely on this Clause it shall immediately give notice to the other with full particulars of the act or matter claimed as a Force Majeure Event. The Party so affected shall take all reasonable steps to remedy the failure to perform and to keep the other Party informed of the steps being taken to mitigate the effects of the Force Majeure Event.

21.2.3 Without prejudice to any accrued rights or remedies, if a Force Majeure Event lasts for more than 30 Working Days either Party may, following consultation with the other Party, give notice of termination of this Agreement.

## 21.3 **Replacement Service Provider**

21.3.1 In the event that Service Provider terminates this Agreement in accordance with Clause 21.1, then the Service Provider shall indemnify Service Provider in respect of procuring the performance of the Services by a Replacement Service Provider in accordance with Clause 21.3.2.

21.3.2 On termination of this Agreement under clause 21.1, Service Provider may enter into any agreement with any third party or parties to provide any or all of the Services and the Service Provider shall be liable for all additional expenditure ("**Costs**") reasonably incurred by Service Provider in having such services carried out including, but not limited to, direct loss and expense, legal and other costs and damages incurred in consequence of such termination. Service Provider may deduct such Costs from the Charges or otherwise recover such Costs from the Service Provider as a debt due.

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

22.1 Upon termination, the Service Provider shall continue to provide the Services in accordance with the terms of this Agreement and will ensure that there is no degradation in the standards of the Services until the

expiry of the termination period and, for a reasonable time thereafter, shall answer such questions from Service Provider's Contract Manager as may be relevant to the transfer of the Services to a replacement Service Provider.

22.2 Notwithstanding the provisions of Clause 19 (Confidentiality) whenever Service Provider chooses to put out to tender for a Replacement Service Provider some or all of the Services, the Service Provider shall disclose to tenderers such information concerning the Services as Service Provider may require for the purposes of such tender. The Service Provider may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.

22.3 The termination or expiry of this Agreement shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to the Parties prior to or after such termination or expiry.

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

22.4.1 the Service Provider shall at the request of the Trust immediately return to the Contract Manager all information (including but not limited to data (including personal data), data bases, lists, correspondence, documents, specifications) and property belonging to Service Provider which may be in its possession, custody or control as acquired or developed in connection with the performance of the Services; and

22.4.2 the Trust shall (subject to its accrued rights of set off and deduction) pay the Service Provider any Charges remaining due in relation to any Services properly performed in accordance with this Agreement up to the date of termination or expiry calculated so far as is possible in accordance with Clause 5 or as otherwise reasonably determined by Service Provider.

### **23. DISPUTE RESOLUTION**

23.1 Trust and the Service Provider shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference ("Dispute") that may arise out of or relate to this Agreement before issuing proceedings in the High Court.

23.2 If the Dispute is not settled through discussion between the Contract Manager and a representative of the Service Provider within a period of 10 Working Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) ("**Senior Personnel**") of each of the Parties for resolution.

23.3 If the Dispute is not resolved within 20 Working Days of referral to the Senior Personnel, either Party may apply to the Centre for Effective Dispute Resolution ("**CEDR**") in London to appoint a Mediator. The costs of the Mediator shall be borne equally by the Parties.

23.4 Where a Dispute is referred to mediation under Clause 23.3, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedure as the Mediator may recommend.

- 23.5 If the Parties reach agreement in mediation, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.
- 23.6 If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Working Days of the service of the Mediation Notice either Party may commence proceedings in the High Court.
- 23.7 Unless otherwise instructed by Service Provider, the Service Provider shall continue to provide the Services in accordance with this Agreement without delay or disruption while the Dispute is being resolved pursuant to this Clause 23.

#### **24. DATA QUALITY**

All Data held by the Service Provider in connection with this Agreement shall be stored and processed in a compliant, comprehensive, up to date, accurate manner which conforms with the relevant industry standard for Data Quality. Upon any reasonable request from the Contract Manager, the Service Provider shall supply a copy of the Data within 2 Working Days of the request or such other time as may be agreed by the Contract Manager (together with the means to read it where deemed necessary by Service Provider).

#### **25. BUSINESS CONTINUITY PLAN**

- 25.1 The Service Provider shall have in place by the Commencement Date of this Agreement a Business Continuity Plan ("**BCP**") a copy of which shall be provided to the Contract Manager. The BCP shall be current and up to date and prepared to British Standard 25999 or at least to an equivalent standard.
- 25.2 The BCP shall be maintained and regularly tested by the Service Provider throughout the Term of this Agreement. The results of such testing shall be forwarded to the Contract Manager within 5 Working Days of the test being completed. The Contract Manager shall then have the right within 20 Working Days, by written statement; to require reasonable alterations to the BCP to be made by the Service Provider at its expense should such alterations be judged by the Contract Manager as needed for sustaining the proper performance of the Services.

#### **26. SUSTAINABILITY**

The Service Provider shall make arrangements to secure continuous improvement in the way in which the Services are provided having regard to a combination of economy, efficiency and effectiveness and shall assist Service Provider in discharging its Best Value Duty in relation to the Services and either Party may propose alternative methods for the improvement of the economy, efficiency and environmental aspects of the Services or the introduction of or change in any information technology in use to support the provision of the Services and the Parties will co-operate to evaluate and, if appropriate, introduce such proposals as a variation of this Agreement.

#### **27. EQUALITY AND SOCIAL VALUES**

- 27.1 The Service Provider is required to have in place an equal opportunities (Equalities) policy at the Commencement Date of this Agreement and throughout the Term and shall comply with the Equality Act 2010 and all related and successor legislation.
- 27.2 The Service Provider shall take all reasonable steps to secure that all of its employees do not unlawfully discriminate and comply with the Service Provider's obligations under this clause.
- 27.3 In the performance of the Services and in its dealings with service users, Service Provider's employees and members of the general public the Service Provider shall comply and shall ensure that its employees comply with:
- 27.3.1 the Human Rights Act 1998 as if the Service Provider was a public body (as defined in the Human Rights Act 1998);
  - 27.3.2 all law relating to equal opportunities including without limitation relating to disability, discrimination, sex discrimination, and race relations;
  - 27.3.3 Service Provider's equal opportunities (Equalities) policies and procedures as may be adopted and amended from time to time and as notified to the Service Provider; and
  - 27.3.4 the Public Services (Social Value) Act 2012.

**28. WAIVER**

No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 33. The single or partial exercise of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

**29. THIRD PARTY RIGHTS**

No third party or other person who is not a Party to this Agreement may enforce any of its terms under the Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 which is hereby expressly excluded.

**30. NO AGENCY OR PARTNERSHIP**

Nothing in this Agreement constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in this Agreement, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

**31. PREVENTION OF FRAUD**

The Service Provider shall take all reasonable steps to prevent a fraud by its employees, servants, agents and/or sub-contractors in connection with the receipt of monies under this Agreement. The Service Provider shall notify Service Provider immediately if it has reason to suspect that any Prohibited Act has occurred or is occurring or is likely to occur.

**32. SURVIVAL OF TERMS**

Nothing in this Agreement shall affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication to come into force or continue in force upon termination or expiry of this Agreement.

**33. NOTICES**

33.1 Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, post or email and if by post must be addressed to the recipient at its registered office, the address stated in **Schedule 1** or any other address (including an email address) notified to the other Party in writing in accordance with this Clause 33 as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:

33.1.1 if delivered by hand, at the time of delivery;

33.1.2 if delivered by post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays); or

33.1.3 if delivered by email, at the time of transmission, provided that a confirming copy is sent by first class post to the other Party or Parties within 24 hours after transmission.

**34. ASSIGNMENT AND SUB-CONTRACTING**

34.1 The Service Provider shall not assign or sub-contract all or any part of the Services without the prior written consent of Service Provider.

34.2 Where the Service Provider sub-contracts all or any part of the Services to any person, the Service Provider shall:

34.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Service Provider under this Agreement insofar as they relate to the Services or part of them (as the case may be) which that sub-contractor is required to provide;

34.2.2 be responsible for payments to that person; and

34.2.3 remain solely responsible and liable to Service Provider for any breach of performance, non-performance, part-performance or delay in performance of any of the Services by any sub-contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Service Provider.

34.3 Service Provider may assign, novate or otherwise transfer this Agreement (in whole or in part) without the consent of the Service Provider.

34.4 Within 10 Working Days of a written request from Service Provider, the Service Provider shall at its own expense execute such agreement as Service Provider or and/or may reasonably require to give effect to any such transfer of all or part of the rights and obligations under this Agreement to one or more persons nominated by Service Provider.

**35. VARIATION**

This Agreement may only be varied or amended with the written agreement of both Parties to this Agreement.

**36. COSTS**

Each Party will pay its own charges, costs and expenses in the performance of its own obligations in this Agreement and the negotiation, preparation and execution of this Agreement.

**37. ENTIRE AGREEMENT**

37.1 Subject to Clause 37.2:

37.1.1 this Agreement and any and all documents referred to in this Agreement contain all of the terms which the Parties have agreed relating to the subject matter of this Agreement which shall supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. No Party has been induced to enter into this Agreement by a statement which it does not contain; and

37.1.2 without prejudice to the Service Provider's obligations under this Agreement, the Service Provider is responsible for and shall make no claim against Service Provider in respect of any misunderstanding affecting the basis of the Service Provider's tender in respect of this Agreement or any incorrect or incomplete information howsoever obtained.

37.2 Nothing in this Clause 37 excludes any liability which a Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

**38. LAW AND JURISDICTION**

This Agreement shall be subject to and construed in accordance with the laws of England and Wales and the Parties hereby submit to the exclusive jurisdiction of the English courts.

**IN WITNESS** whereof this Agreement was executed and delivered as a Deed on the date above written

**THE COMMON SEAL of** )  
**MAIDSTONE BOROUGH COUNCIL** )  
was affixed to this Deed which was )  
delivered when stated in the presence )  
of:

.....

Authorised Signatory

**EXECUTED** as a **DEED** by )  
acting by )

.....

.....

Secretary

DRAFT

**SCHEDULE 1 - KEY AGREEMENT INFORMATION**

1. Agreement Reference Number:
2. Name of Service Provider:
3. Agreement Commencement Date:
4. Term:
5. Service Provider's Contract Manager:

Name:  
Address:  
Tel:  
Email:

6. The Trust's Representative:

Name and Position:  
Address:  
Tel:  
Email:

7. The Service Provider's Key Personnel:

Name and Position:  
Address:  
Tel:  
Email:

8. Address for service of notices and other documents in accordance with Clause 33 (Notices):

For Service Provider: Head of Legal Services at Service Provider's normal business address.

For the Trust:

## **SCHEDULE 2 – SERVICES**

**[insert]**

- **Communications**
- **Committee support**
- **Management services**
- **Finance**
- **Health and Safety**
- **Human Resources**
- **ICT services**
- **Learning and Development**
- **Legal services**
- **Parking services**
- **Contract management**
- **Property services**
- **Procurement services**

DRAFT

**SCHEDULE 3 – Service CHARGES**

**Full details of the charges due will be set out here, including the recharges schedule and costs of directly employed staff.**

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DRAFT

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