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Draft Services Agreement

MAIDSTONE BOROUGH COUNCIL
and
MAIDSTONE PROPERTY HOLDINGS LIMITED

SERVICES AGREEMENT

Ref: OJD (ADL)/47740.0002

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Birmingham

B3 2ES

5543953-1

THIS SERVICES AGREEMENT is made on

2019

BETWEEN

- (1) **MAIDSTONE BOROUGH COUNCIL** of Maidstone House, King Street, Maidstone, United Kingdom, ME15 6JQ (the “**Council**”);
- (2) **MAIDSTONE PROPERTY HOLDINGS LIMITED** (Company Registration Number: 10368924 whose registered office is at Maidstone House, King Street, Maidstone, United Kingdom, ME15 6JQ (the “**Company**”)

WHEREAS

- (A) The Council is a local authority in England and has established the Company using its power under the General Power of Competence (sections 1 and 4, Localism Act 2011) to allow the Council to trade and act for commercial purpose.
- (B) The Company is not a contracting authority under the Public Contracts Regulations 2015 because it is a body established for the purpose of meeting needs in the general interest, having an industrial or commercial character.
- (C) The Company wishes to purchase support services from the Council.
- (D) The Council is required by The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 to recover the costs of any accommodation, goods, services, staff or any other thing that it supplies to the Company.

NOW IT IS HEREBY AGREED as follows:

1 INTERPRETATION

1.1 In this Services Agreement where the context so admits:

1.1.1 The following words and phrases shall bear the following meanings:

“**Commencement Date**” means 2019

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“**Employees**” means persons employed by the Council or any contractor of the Council and engaged in the delivery of the Services and **Employee** means any one of them as the context requires;

“**Operational Agreement**” means the agreement entered into by the Council and the Company dated 2019

“**Parties**” means the Council and Company;

“**Price**” shall mean the sum payable by the Company to the Council for the provision of the Services as referred to in Clause 3 and in Schedule B as amended in accordance with Clause 2.3 or Schedule B;

“**Services**” shall mean the Services to be provided under this Services Agreement as set out in Schedule A; and

- 1.1.2 Words denoting the singular shall include the plural and vice versa, words denoting the masculine gender shall include the feminine gender and vice versa and words denoting persons shall include corporations.
 - 1.1.3 Reference to any statutory provisions or instruments shall be deemed to include reference to any such provisions or instruments as from time to time amended, varied, replaced, extended or re-enacted and to any orders or regulations under such provisions.
 - 1.1.4 Reference to a Clause or a Schedule shall be deemed to be references to a clause or a schedule to this deed and references to a sub-clause shall be deemed to be references to a sub-clause of the clause in which the reference appears.
- 1.2 Clause headings are included for ease of reference only and shall not affect this Services Agreement or the interpretation hereof. Words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 PROVISION OF SERVICES

- 2.1 The Council shall provide to the Company the Services set out in Schedule A.

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- 2.2 Such Services shall be provided by the Council to the level and standard specification agreed between the Parties from time to time and the Council agrees to use reasonable endeavours to meet those standards. Where no standards are specified the Council shall provide the Services in a competent and professional manner to provide a high quality service.
- 2.3 The Parties agree to comply with any relevant policies of the Council and the Company applicable to the Services, standing orders and financial regulations binding on any or all Parties from time to time provided that the Council shall be entitled to vary at any time the Price for the Services inter alia if any amendment to such policies and procedures (whether by the Company or the Council or both) would result in additional expenditure or cost for the Council.

3 PAYMENT FOR SERVICES

- 3.1 The Company hereby agrees to pay the Council the Price for the Services, such payments to be made in the manner and at the times set out in Part II of Schedule B.
- 3.2 For the avoidance of doubt all sums payable under this agreement are exclusive of VAT and any other duties or taxes and any such duties or taxes shall be payable in addition to such sums.

4 PROVISION OF AND PAYMENT FOR OTHER SERVICES

- 4.1 The Parties may agree to add additional services to the definition of Services from time to time and shall record any such agreement (including the price to be paid for those additional services) in writing signed by both Parties.

5 TERM OF THE AGREEMENT

- 5.1 This Services Agreement shall commence on the Commencement Date and remain in force until such time as it is terminated in accordance with Clause 8.

6 REVIEW OF OPERATION

- 6.1 The Council shall, at the request of the Company, report in writing to the Company on the Services delivered by the Council to the Company [in any financial year to 31

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March], such report to be delivered within three months following the end of the financial year in question.

- 6.2 A Party may request a review meeting at any time during a financial year to be coordinated by the [Director of Finance and Business Improvement of the Council (or such person authorised by the Director of Finance and Business Improvement to act in his place).
- 6.3 Following such a review meeting, at which the Services and any relevant service standards in respect of the then current year of operation may be revised by consent, any amendments to this Services Agreement shall be noted in writing signed on behalf of the Parties and shall operate as variations to this Services Agreement.

7 EMPLOYEES

- 7.1 The Parties do not intend that any of the Employees shall be employed by or seconded to the Company.
- 7.2 The Company and the Council shall comply with the General Data Protection Regulation (Regulation (EU) 2016/679) and the Data Protection Act 2018 in respect of any personal data processed pursuant to this Services Agreement and shall further comply with the provisions set out at Schedule [C].
- 7.3 The Company shall fulfil all duties relating to the Employees' health, safety and welfare as if the Employees were the Company's employees and shall comply with the Council's reasonable requests in connection with the Council's duties in relation to the Employees.
- 7.4 The Company shall indemnify the Council fully and keep the Council indemnified fully at all times against any loss, injury, damage or costs suffered, sustained or incurred by:
- 7.4.1 the Employees in relation to any loss, injury, damage or costs arising out of any act or omission by the Company or its employees or agents in the course of carrying out the Services; or
- 7.4.2 a third party, in relation to any loss, injury, damage or costs arising out of any act or omission of the Employee in the course of carrying out the Services.
- 7.5 The Council shall indemnify the Company fully and keep the Company indemnified fully at all times against any claim or demand by the Employees arising out of their employment by the Council or their termination, except for any claim relating to any act

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or omission of the Company or its employees or agents for which the Company shall indemnify the Council fully.

- 7.6 The Council shall indemnify the Company against any claim that the Employees are employed by the Company.

8 TERMINATION

- 8.1 The Parties may agree to terminate this Services Agreement or the provision of any Service under it at any time.
- 8.2 Notwithstanding Clause 11.3, the Council may serve notice in writing on the Company to terminate this Services Agreement or the provision of any Service under it at any time.

9 RESOLUTION OF DISPUTES AND NOTICES

The Parties agree that Clause 28 (Dispute Resolution) of the Operational Agreement shall apply to the resolution of any dispute under this Services Agreement and the provisions of Clause 28 are hereby incorporated into this Services Agreement.

10 ILLEGALITY

- 10.1 If any provision of this Services Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 10.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

11 FORCE MAJEURE

- 11.1 No Party shall be in breach of this Services Agreement or any part thereof if there is any total or partial failure of performance by it or its duties or obligations under this Services Agreement occasioned by act of God, natural disaster, fire, act or intervention of government or state riot or civil commotion, insurrection or industrial dispute of whatever nature or any other reason beyond the control of a Party.
- 11.2 If a Party is unable to perform any of its duties or obligations under this Services Agreement as a direct result of the effect of one of the reasons detailed in Clause 11.1 that Party shall give written notice to the other of the inability stating the reason.
- 11.3 Following service of a notice under Clause 11.2, the operation of this Services Agreement or the relevant part of the Services Agreement shall be suspended during the period (and only during the period) in which such reason continues and forthwith upon such reason ceasing to exist the Party relying upon it shall give written notice to the other of this fact, provided that if the reason continues for a period of more than 90 days and substantially affects the commercial basis, financial viability or practicality of this Services Agreement the Party not claiming relief under this Clause shall have the right to terminate this Services Agreement upon giving 30 days written notice of such termination to the other Party.

12 ASSIGNMENT

- 12.1 The Council may assign its rights under this Services Agreement at any time.
- 12.2 The Company may only assign its rights under this Services Agreement with the prior written consent of the Council.

13 INCORPORATION OF TERMS FROM THE OPERATIONAL AGREEMENT

- 13.1 The following terms of the Operational Agreement (as amended from time to time) apply and are incorporated into this Services Agreement:
- 13.1.1 Clause 11 (Confidentiality);
 - 13.1.2 Clause 12 (Information, Scrutiny and Accountability);
 - 13.1.3 Clause 16 (Variation and Waiver);
 - 13.1.4 Clause 17 (Costs);
 - 13.1.5 Clause 18 (No Partnership);

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- 13.1.6 Clause 19 (Good Faith);
- 13.1.7 Clause 20 (Third Party Rights);
- 13.1.8 Clause 21 (Notice);
- 13.1.9 Clause 22 (Interest on Late Payment);
- 13.1.10 Clause 27 (Governing Law and Jurisdiction).

13.2 References in the provisions of the Operational Agreement listed at Clause 13.1 to “Agreement” are to be read for the purposes of this “Services Agreement” as references to “Services Agreement”. References to “Company” and “Council” in this Services Agreement and the Operational Agreement have the same meaning.

EXECUTED and delivered as a deed at the date specified at the beginning of this Services Agreement.

The COMMON SEAL of
MAIDSTONE BOROUGH COUNCIL

was affixed to this Agreement in the presence of:

.....

Executed as a DEED by **MAIDSTONE PROPERTY HOLDINGS LIMITED** acting by
[.....], a director and [.....], a director

.....

Director

.....

Director

SCHEDULE A
SERVICES DESCRIPTION

SERVICES to be provided by the Council to the Company are:

Legal

- To be provided by the Mid Kent Legal Partnership (MKLS).
- To include all areas of work provided by MKLS, except in any instance when MKLS and the Company agree that the work should be outsourced, because of lack of internal resource or specialist knowledge.
- All work for the Company will be charged at the same hourly rate in force at any time for work which MKLS carries out for Maidstone Borough Council.

Finance

- To maintain the accounting records of MPH Limited, including related financial accounting systems
- To process all payments and receipts
- To prepare regular quarterly monitoring reports for the Board and for Policy & Resources Committee
- To liaise with the MPH Limited external accountants

Directors

1. MPH Directors
 - To attend MPH company meetings
 - To fulfil the statutory responsibilities of a director
 - To commission goods and services on behalf of MPH
 - To liaise with the management provider on operational matters

2. MBC representative
 - To represent MBC at MPH company meetings
 - To advise MPH from a shareholder perspective
 - To report to Policy & Resources Committee on MPH activities

Democratic Services

- To be provided by the Democratic and Electoral Services Team.
- To provide administrative support for all formal meetings of the Board including minutes, agendas and arranging meetings.
- To undertake the company secretary role for the Company.
- All work for the company will be charged at an hourly rate.

Property Management:

MPH has entered into an arrangement with Sibley Pares to provide the marketing and residential management of Lenworth House and Grenada House.

The services provided by Sibley Pares includes:

- marketing and letting of vacancies;
- rent collection;
- property inspection and tenancy liaison;
- receiving maintenance requests from residents;
- liaising with MBC concerning repairs;
- payment of utilities;
- compliance with gas safety certificates.

Maidstone Borough Council's Housing Service provide MPH with an interface and contract management of the agreement between Sibley Pares and MPH.

Sibley Pares charges MPH fee incorporated into the agreement between MPH and Sibley Pares dated 1 February 2019.

Maidstone Borough Council's Housing Service will charge MPH a fee calculated as an hourly rate based on each officers' time utilised in contract management.

SCHEDULE B

PART I

1. Calculation of the Price

The Price will be a reasonable, fair and consistent price as determined by the Council from time to time as part of its budget-setting processes.

PART II

Procedure for Payment of the Price

1. The budgetary Price shall be payable monthly in arrears by the Company to the Council
2. The final adjustment charge / credit must be paid by the Company to the Council by 30th June each year.

SCHEDULE C

DATA PROTECTION

In this Schedule C the following additional definitions shall apply:

“Data Protection Legislation”	means the Data Protection Act 2018, as amended, replaced or superseded from time to time including by the GDPR. This definition also includes all guidance, standards and codes of practice published by the Information Commissioner’s Office, or any replacement body, which relate to data protection;
“GDPR”	means the General Data Protection Regulation 2016/679;
“Personal Data”	has the meaning set out in Article 4 of the GDPR and relates only to personal data supplied by one party to another under this Services Agreement, or which is collected or generated in the performance of services delivered pursuant to this Services Agreement;
Controller, Data Subject, Personal Data Breach, Processor, and Process(ing) have the meaning assigned to them in the GDPR.	

1. The Parties acknowledge that for the purposes of this Services Agreement either of them could be the Controller or the Processor of Personal Data. The parties set out in Annex 1 and Annex 2 (as may be varied from time to time in accordance with paragraph 2 below) to this Schedule C the different types of Personal Data that they are the Processor of and the basis, as at the date of this Agreement that they process that Personal Data. The terms of this Schedule C shall apply and references to Processor or to Controller are to the Processor or Controller for the purposes of the Personal Data in question.
2. The Processor shall process Personal Data only on documented instructions from the Controller, to the extent that is necessary for the purposes and in the manner specified in such documented instructions. Annexes 1 and 2 shall constitute the first such documented instructions and the Controller shall have the right to amend such table unilaterally by giving new documented instructions.

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3. If the Processor is required by law to process the Personal Data in a manner which is not specified by the Controller in accordance with paragraph 2 above, the Processor must inform the Controller about such legal requirement in writing promptly upon discovering it. The Processor shall under no circumstances process Personal Data in such manner before it gives written notice to the Controller unless the same law prohibits notification on important grounds of public interest.
4. The Processor will keep records of any processing of Personal Data it carries out on behalf of the Controller which are sufficient to demonstrate compliance by the Controller and the Processor with the Data Protection Legislation, and which shall include as a minimum the information referred to in article 30 of the GDPR.
5. The Processor agrees to:
 - a. promptly comply with the Controller's written instructions and requirements from time to time, including in particular requests to amend, delete or transfer data;
 - b. immediately inform the Controller if the Processor thinks that it has been given an instruction which does not comply with Data Protection Legislation;
 - c. abide by the Controller's data protection policy as it may be updated from time to time;
 - d. act in a manner that ensures that at all times the Controller is compliant with Data Protection Legislation, including in particular articles 32, 33, 34, 35 and 36 of the GDPR, as well as to fully cooperate with and assist the Controller to ensure that the Controller is compliant;
 - e. upon request, provide the Controller with all the information that the Controller needs to show that both the Controller and the Processor have met the data protection obligations set out in this agreement and especially article 28 of the GDPR;
 - f. fully cooperate and assist the Controller to give effect to the rights of Data Subjects, by having appropriate technical and organisational measures in place.
6. If the Processor receives any complaint, request (including a subject access request), notice or communication which relates directly or indirectly to the Personal Data or to either Party's compliance with Data Protection Legislation, it shall immediately forward it to the Controller and shall provide the Controller with full information, co-operation and assistance in relation to any such complaint, request, notice or

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communication, as the Controller may require. The Processor shall not respond to any such request or otherwise deal with it except as instructed by the Controller.

7. Personal Data is to be treated as Confidential Information (as that term is defined in Clause 11 of the Operational Agreement). The Processor shall ensure that all persons involved in the processing of Personal Data are reliable and are under a duty to keep the Personal Data confidential. Access to the Personal Data shall be limited to individuals who need to know and/or access the relevant Personal Data for the purposes of this Services Agreement.
8. The Processor undertakes to, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk (which may be of varying likelihood and severity) for the rights and freedoms of natural persons, implement appropriate technical and organisational measures to effectively keep the Personal Data secure and implement the principles of data protection by design and by default. Security measures should:
 - a. to the greatest extent possible involve pseudonymisation and encryption of Personal Data;
 - b. ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and the Services;
 - c. be able to restore the availability and access to Personal Data in a timely manner in the event of a physical and technical incident;
 - d. include regular testing, assessing and evaluating of effectiveness of technical and organisational measures to ensure security of Processing in the manner required by article 32 of the GDPR and any relevant guidance and codes
9. In assessing the appropriate level of security the Processor shall take into account in particular the risks that are posed by the Processing as well as those of a potential Personal Data Breach.
10. The Processor shall notify the Controller about any Personal Data Breach immediately upon discovering the breach, which notification shall:
 - a. describe the nature of the breach including the categories and number of Data Subjects and records concerned;
 - b. communicate the name and contact details of all persons from whom more information can be obtained about the breach;
 - c. describe the likely consequences of the breach;

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- d. describe the measures taken by the Processor and the measures which the Processor proposes to be taken by the Controller to address the Personal Data Breach and mitigate its possible adverse effects.
11. Where any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable the Processor will restore such Personal Data at its own expense.
12. If a Personal Data Breach occurs the Processor shall co-operate with the Controller and take all reasonable steps as are directed by the Controller to assist in the containment, mitigation, remediation and investigation of such Personal Data Breach.
13. The Processor shall not subcontract any of its processing operations performed on behalf of the Controller under this agreement without the prior written consent of the Controller.
14. Where the Processor wishes to appoint a Subprocessor the Processor shall make a request in writing to the Controller and provide the Controller with evidence that the proposed Subprocessor is capable of performing the obligations of the Processor under this agreement and under Data Protection Legislation.
15. The Controller may require the Processor to provide it with any additional evidence the Controller may require and the Controller shall have no obligation to grant consent under this clause.
16. Any appointment of a Subprocessor shall be made on the basis of a written agreement which imposes on the Subprocessor the same obligations which are imposed on the Processor under this Services Agreement, and which permits the Controller to enforce such obligations directly against the Subprocessor (and to exercise the rights of the Processor directly against the Subprocessor).
17. The appointment of a Subprocessor shall not relieve the Processor from any of its obligations under this Services Agreement and where the Subprocessor fails to fulfil its obligations the Processor shall remain fully liable to the Controller for the performance of the Subprocessor's obligations.
18. The Processor shall not transfer Personal Data outside the European Economic Area without the prior written consent of the Controller.
19. If a transfer of Personal Data from the Controller to the Processor constitutes a transfer of Personal Data outside the European Economic Area, the Parties agree to be bound, and such transfer shall be governed by the standard contractual clauses contained in the European Commission Decision 2010/87/EU or any replacement standard contractual clauses which may be approved by the European Commission or the Information Commissioner's Office, unless the Parties agree to rely on and

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comply alternative conditions for transferring Personal Data outside the European Economic Area under Chapter V of the GDPR. References therein to the data exporter shall be construed as references to the Controller and references to the data importer shall be construed as references to the Processor.

20. The Controller or persons nominated by it shall be entitled to inspect and audit the Processor's premises, facilities, equipment, records, documents and electronic data relating to the processing of Personal Data, and to audit the Processor's processes, for the purpose of ensuring compliance by the Processor with its data protection obligations, including its obligations under this agreement. The Processor shall cooperate with the Controller in carrying out such inspections and audits and shall ensure that all persons involved in the processing of personal data are available to be interviewed by the Controller.
21. The Processor shall indemnify the Controller against all liability, loss, damage and expense of whatsoever nature incurred or suffered by the Controller due to any failure by the Processor or its employees, agents or Subprocessors to comply with any of its obligations under this Services Agreement and/or under Data Protection Legislation.
22. Upon the termination or expiry of this Services Agreement the Processor shall, at the choice of the Controller, return all the Personal Data and/or irretrievably delete the Personal Data in accordance with the instructions of the Controller, unless the Processor is required to retain the Personal Data by law.
23. The provisions of this Schedule shall continue in effect notwithstanding the termination or expiry of this Services Agreement.
24. Nothing in this Agreement shall relieve the Processor of its own direct responsibilities and liabilities under the Data Protection Legislation

Annex 1 to Schedule C – Data Processing Activities (Council)

The Council as Processor shall Process Personal Data only to the extent that is necessary for the purposes specified in the table below (and not for any other purpose) and only in the specified manner:

Description of Personal Data and categories of Data Subjects	Method and purpose of Processing	Duration

The above table can be unilaterally modified by the Company as Controller from time to time by giving notice to the Council in writing.

Annex 2 to Schedule 6 – Data Processing Activities (Company)

The Company as Processor shall Process Personal Data only to the extent that is necessary for the purposes specified in the table below (and not for any other purpose) and only in the specified manner:

Description of Personal Data and categories of Data Subjects	Method and purpose of Processing	Duration

The above table can be unilaterally modified by the Company as Controller from time to time by giving notice to the Provider in writing.