**APPENDIX**

**DRAFT CONTRACT TO BE TAILORED AND AMENDED AS NECESSARY BY THE COUNCIL FOLLOWING AWARD OF THE CONTRACT**

**Dated**

**(1) THE COUNCIL OF THE CITY OF STOKE-ON-TRENT**

**and**

1. **[INSERT NAME OF SERVICE PROVIDER]**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**AGREEMENT**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**for the provision of**

**a Design Code Production and Associated Processes**

 James Doble

 Assistant Director – Governance & Registration

 Stoke-on-Trent City Council

 Civic Centre

 Glebe Street

 Stoke-on-Trent

 ST4 1HH

**THIS AGREEMENT** is made on the

**BETWEEN**

**(1) THE COUNCIL OF THE CITY OF STOKE-ON-TRENT** of Civic Centre Glebe Street Stoke-on-Trent ST4 1HH (hereinafter referred to as “the Council”); and

**(2) [INSERT NAME OF PROVIDER]** whose registered place of business is situated at [INSERT REGISTERED ADDRESS OF PROVIDER] with registered company number [INSERT COMPANY NUMBER] (hereinafter referred to as “the Service Provider”)

**each a “Party” and together the “Parties”**

 **WHEREAS**

(A) The Council wishes to enter into this Agreement with the Service Provider for the provision of a design code production and associated processes in accordance with the terms and conditions set out in this Agreement and as is more particularly described in the Specification which is annexed to and incorporated into this Agreement at Appendix 1 [and the Service Provider’s Tender Response Documentation which is annexed and incorporated into this Agreement at Appendix 3] .

(B) The purpose of the services is to produce a green belt assessment to inform the Council’s local plan.

**NOW IT IS HEREBY AGREED** as follows:-

1. **Definitions and Interpretation**
	1. In this Agreement unless the context otherwise requires the following words and expressions shall have the meaning given to them below:

“**Agreement**” means this agreement between the Council and the Service Provider consisting of these clauses and any attached Appendices

“**Approval**” means the written consent of the Council

**“Charges**” means the charges which shall become due and payable by the Council to the Service Provider in respect of the proper performance of the Services in accordance with the provisions of this Agreement being a total of £[*insert upon tender award amount of successful tender].*

“**Commencement Date**” means [ ]

**“Completion Date”** means [ ]

“**Confidential Information**” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party all personal data and sensitive personal data within the meaning of the Data Protection Act 2018 and commercially sensitive information

“**Default Notice**” means a notice which sets out the nature of the Service Provider Default committed, whether or not it is a Serious Default what remedial action is required and the timescale within which the remedial action must take place

 “**Dispute Resolution Procedure**” means the dispute resolution procedure described in clause 27

“**Employee**” means all persons employed by the Service Provider together with the Service Provider’s servants, agents and Sub-Contractors

“**FOIA**” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation

“**Information**” has the same meaning as provided under section 84 of the Freedom of Information Act 2000

“**Intellectual Property Rights**” means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise) and applications for any of the foregoing; copyright, database rights, domain names, trade or business names, moral rights, and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off

“**Replacement Provider**” means any third party provider appointed by the Council from time to time to provide any services which are substantially similar to the Service and which the Council receives in substitution for any part of the Service following the expiry, termination or partial termination of the Agreement

“**Serious Default**” means a Service Provider Default which either (a) the Service Provider commits on two or more occasions during any consecutive period of 6 months even if the Service Provider rectifies the Service Provider Default each time; or which (b) amounts to a material breach by the Service Provider of its obligations under this Agreement; or which (c) in the Council’s reasonable opinion materially prejudices the health, safety and/or welfare of a Service User

“**Services**” means the services more particularly described in the Specification attached hereto which shall take effect as contractual obligations upon the Service Provider.

“**Service Provider Default**” means any breach of the Service Provider’s obligations (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of the Service Provider, its employees, agents or Sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which the Service Provider is liable to the Council

 “**Specification**” means the requirements specification for the provision of the Service attached to this Agreement at Appendix 1

 “**Sub-Contractor**” means the contractors or providers engaged by the Service Provider to provide services to, for or on behalf of the Service Provider for the purposes of providing the Service to the Council

 “**UK GDPR**” has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018

“**Working Day**” means a day (other than a Saturday or Sunday) on which banks are open for domestic business

“**Works**” means the results of surveys, site assessments, including all data, reports setting out the findings (including any drafts of such report and presentations) and any additional materials gathered / prepared under this Agreement.

* 1. References to numbered clauses or appendices are to the relevant numbered clauses or appendices in this Agreement; references to paragraphs are to paragraphs of the relevant Appendix.
	2. The headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement;
	3. References to the singular shall include the plural and references to the masculine shall include the feminine and the neuter and vice versa in each case;
	4. References to a statute, statutory instrument, regulation, order or quality standard shall be construed as a reference to such statute, statutory instrument, regulation, order or quality standard as amended or re-enacted or updated or superseded from time to time;
	5. References to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
	6. The words “include” “includes” and “including” shall be construed without limitation;
	7. No terms and conditions of the Service Provider whether stated on an invoice in a catalogue or other literature shall apply override or supersede any of the terms of this Agreement;
	8. The Appendices form part of this Agreement and shall have effect as if set out in full in the body of this Agreement.
	9. Where there is any conflict or inconsistency between the provisions of the Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
		1. the clauses of the Agreement
		2. the Specification at Appendix 1 to this Agreement;
		3. the Pricing Schedule at Appendix 2 to this Agreement;
		4. the Service Provider’s tender response at Appendix 3 to this Agreement.
1. **Contract Period**
	1. This Agreement shall take effect on the Commencement Date and shall expire on the Completion Date unless it is otherwise terminated in accordance with this Agreement (“the Contract Period”).
2. **Council’s Obligations**
	1. Save as otherwise expressly provided the obligations of the Council under the Agreement are obligations of the Council in its capacity as a contracting party and nothing in the Agreement shall operate as an obligation upon or in any other way fetter or constrain the Council in any other capacity nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Council to the Service Provider.
3. **Service Provider’s Warranties and Due Diligence**
	1. The Service Provider warrants that it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services. Save as expressly provided in the Specification, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Service Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
	2. The Service Provider warrants that it is capable of performing the Services in all respects in accordance with this Agreement. The Service Provider warrants and represents that all information contained in or provided with the Service Provider's tender remains true, accurate and not misleading as at the Commencement Date, save as may have been specifically disclosed in writing to the Council prior to execution of this Agreement.
4. **Supply of Services**
	1. The Service Provider shall provide the Services during the Contract Period in accordance with this Agreement and in accordance with all applicable laws.
	2. The Service Provider shall provide the Services with reasonable skill and care in accordance with the best practices prevailing in the industry-sector of which the Services form part.
	3. The Council shall have the power to inspect and examine the performance of the Services at any reasonable time provided that the Council gives reasonable notice to the Service Provider at any premises where any part of the Services are being performed.
	4. Timely provision of the Services shall be of the essence including commencing the provision of the Services within the time agreed or on a specified date.
	5. Without prejudice to the other rights and remedies available to the Council, the Council may require the Service Provider to reimburse the Council for all reasonable costs incurred by the Council which have arisen as a consequence of the Service Provider’s delay in the performance of its obligations under the Agreement (except where such delay is caused by the Council’s breach of this Agreement or negligence).
	6. Without prejudice to the other rights and remedies available to the Council, in the event that in the Council’s reasonably held opinion any part of the Services do not meet the requirements of this Agreement, the Council may (except where such non-compliance is caused by the Council’s breach of this Agreement or negligence) require the Service Provider at its own expense to re-schedule and carry out those Services in accordance with the requirements of the Agreement within such reasonable time as may be specified by the Council.
	7. The Service Provider acknowledges that the Council does not provide any guarantee or other assurance as to the volumes of Services which it will require from the Service Provider pursuant to this Agreement. The Service Provider further acknowledges that it is not appointed on an exclusive basis, and that nothing in this Agreement prevents the Council from appointing a third party to carry out services of a kind similar to or the same as the Services (or from carrying out such activities on an in-house basis).
5. **Manner of Carrying out the Services**
	1. The Service Provider shall comply with all reasonable instructions given to it by the Council in relation to the performance of the Service.
	2. The Service Provider shall provide all equipment required for the proper performance of the Service, and warrants and represents that such equipment is fit for all the purposes for which it will be required.
	3. The Service Provider warrants and represents that any Employees assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Service and, insofar as such persons were named in the Service Provider’s tender, it shall not remove or replace such persons without prior Approval. The Council shall have the right after consultation with the Service Provider to request the removal of any person engaged in the performance of the Services if in its reasonable opinion the performance or conduct of such person is or has been unsatisfactory.
	4. No enquiry inspection, approval, sanction, comment, consent, decision or instruction at any time made or given by or on behalf of the Council in relation to any equipment or any aspect of the Services shall operate to exclude or limit the obligation of the Service Provider to deliver the Services in accordance with this Agreement.
	5. The Service Provider shall not without prior Approval accept any trade, commission, discount, allowance, direct or indirect payment or other consideration from any third party in connection with the performance of the Services.
	6. The Service Provider acknowledges that they will not be able to act for another organisation or individual with respect to representations, which consider or challenge any aspect of the retail and leisure study.
6. **Disclosure and Barring Requirements**

NOT USED

1. **Charges**
	1. In consideration of the proper performance of the Services by the Service Provider in accordance with the terms and conditions of this Agreement, the Council shall pay the Charges to the Service Provider subject to and in accordance with the following provisions of this Agreement.
	2. The Charges shall be the full and exclusive remuneration of the Service Provider in respect of the supply of the Services. Unless otherwise agreed in writing by the Council, the Charges shall include every cost and expense of the Service Provider directly or indirectly incurred in connection with the performance of the Services.
	3. The Service Provider will raise invoices in accordance with Appendix 2 in full compliance with this Agreement. Invoices must include the Council’s purchase order number and a breakdown of the Services supplied in the invoice period together with any other supporting information required by the Council to verify their accuracy and validity. Invoices will not be rejected on grounds that they are electronic provided they comply with the standard and any of the syntaxes published in the UK version of Commission Implementing Decision (EU) 2017/1870 as it forms part of English law under the European Union (Withdrawal) Act 2018.
	4. The Council shall pay undisputed invoices within 30 days of receipt of the invoice.
	5. Where an invoice is disputed by the Council, it will make a payment equal to the sum not in dispute, and the dispute as to the sum that remains unpaid shall be referred to the dispute resolution procedure in clause 27 without undue delay for resolution.
	6. All amounts stated in this Agreement are exclusive of VAT which shall be charged at the prevailing rate. The Council shall, following the receipt of a valid VAT invoice, pay to the Service Provider a sum equal to the VAT chargeable in respect of the Services.
	7. Where an invoiced sum is in dispute pursuant to clause 8.5 the Service Provider shall not be permitted to suspend the supply of the Services, except if it has acquired the right to terminate this Agreement for a failure to pay undisputed sums pursuant to clause 23.4.
	8. If a payment of an undisputed amount is not made by the Council by the due date, then the Council shall pay the Service Provider interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
	9. Without prejudice to any other rights and remedies which it may have under this Agreement, the Council may:
		1. reduce payments proportionately in the event of unsatisfactory performance by the Service Provider; and
		2. if any sum of money is recoverable from or payable by the Service Provider under this Agreement (including any sum which the Service Provider is liable to pay to the Council in respect of any breach of this Agreement), unilaterally deduct that sum from any sum then due, or which may come due, to the Service Provider under this Agreement or under any other agreement or contract with the Council.
	10. The Service Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Service Provider.
	11. Without prejudice to the provisions of clause 29, where the Service Provider enters into a Sub-Contract, the Service Provider shall include in that Sub-Contract:

(a) provisions having the same effect as clauses 8.4 and 8.5 of this Agreement; and

(b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 8.4 and 8.5 of this Agreement.

 In this clause 8.11, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the Services.

* 1. Any overpayment by either Party shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
	2. In the event that the Charges are not used or spent in full by the Service Provider the Council shall be entitled to claw back the unused or unspent funds.
	3. In the event that the Council elects to terminate this Agreement then the Council’s liability to remunerate the Service Provider shall be limited to such apportioned payment in respect of the remaining months of the term prior to such termination. For the avoidance of doubt the Service Provider shall not be entitled to any remuneration in respect of any period subsequent to the date of cessation of this Agreement should the cessation date be earlier than the Completion Date.
1. **Mistakes in Information**

The Service Provider shall be responsible for the accuracy of all documentation and information supplied to the Council by the Service Provider in connection with the provision of the Services and shall pay the Council any extra costs occasioned by any discrepancies errors or omissions therein.

1. **Conflicts of Interest**
	1. The Service Provider shall take appropriate steps to ensure that neither it nor any of its Employees are placed in a position where in the reasonable opinion of the Council there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of the Service Provider or such persons and the duties owed to the Council under the provisions of the Agreement. The Service Provider will disclose to the Council full particulars of any such conflict of interest which may arise.
	2. The provisions of this clause shall apply during the continuance of the Agreement and for a period of one year after its termination.
2. **Fraud**

 The Service Provider shall take all reasonable steps in accordance with good industry practice to prevent any fraudulent activity by the Service Provider and its Employees (including its shareholders members and directors) and/or any of the Service Provider’s suppliers in connection with the receipt of monies from the Council. The Service Provider shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

1. **Bribery**
	1. The following constitute “Prohibited Acts” under this clause 12:
		1. to directly offer, promise or give to any person working for or engaged by the Council a financial or other advantage to:

 (a) induce that person to perform improperly a relevant function or activity; or

(b) reward that person for improper performance of a relevant function or activity.

* + 1. to directly or indirectly request, agree to receive, or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement.
		2. committing any offence:

 (a) under the Bribery Act 2010;

 (b) under legislation creating offences concerning fraudulent acts;

(c) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or

 (d) defrauding attempting to defraud or conspiring to defraud the Council.

* 1. The Service Provider:
		1. shall not and shall procure that any Employees shall not commit a Prohibited Act
		2. warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council or that an agreement has been reached to that effect in connection with the execution of this Agreement.
	2. The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Employee from committing a Prohibited Act and shall enforce it where appropriate.
	3. If any breach of clause 12.2 is suspected or known the Service Provider must notify the Council immediately.
	4. If the Service Provider provides notice to the Council in accordance with clause 12.4 the Service Provider shall respond promptly to any enquiries made and cooperate with any investigation carried out by the Council and allow the Council access to audit books, records and any other relevant documentation. This obligation shall continue for a reasonable time after expiry or termination of this Agreement.
	5. The Council may terminate this Agreement by written notice with immediate effect if the Service Provider or its Employees (whether or not acting with the Service Provider’s knowledge) breaches clause 12.2.
	6. If this Agreement is terminated under clause 12.6 the Council may recover from the Service Provider the amount of any loss suffered by the Council resulting from the termination including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any other loss sustained by the Council in consequence of any breach of this clause 12 whether or not this Agreement has been terminated.
1. **Discrimination and Equal Opportunities**
	1. The Service Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Service Provider shall not unlawfully discriminate within the meaning and scope of equal opportunities legislation, which includes but is not limited to the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, any statutory modification or re‑enactment thereof.
	2. The Service Provider shall ensure that all Employees of the Service Provider and all suppliers and Sub-Contractors employed in the execution of the Agreement are aware of the provisions of clause 13.1.
2. **Health and Safety**
	1. The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety which may apply to the Service Provider its Employees and other persons working on the premises in the performance of the Agreement.
	2. The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.
	3. Without limiting the generality of clause 14.1, the Service Provider shall implement all health and safety measures which are required in response to COVID-19 under the Health and Safety at Work etc Act 1974 and associated legislation and the requirements of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 or any subsequent statutory amendment, modification or replacement thereof.
3. **The Modern Slavery Act and the CTSA 2015**
	1. The Service Provider acknowledges that the Council has a duty under the Counter-Terrorism and Security Act 2015 (CTSA) to endeavour to prevent people from being drawn into terrorism. The Service Provider agrees to facilitate the Council’s compliance with this duty including by ensuring that its frontline staff:-
		1. understand what radicalisation means and why people may be vulnerable to being drawn into terrorism as a consequence of it;
		2. are aware of what is meant by the term “extremism” and the relationship between extremism and terrorism;
		3. know what measures are available to prevent people from becoming drawn into terrorism and how to challenge the extremist ideology that can be associated with it;
		4. obtain support for people who may be exploited by radicalising influences.

An explanation of the terms ‘radicalisation’ and ‘extremism’ and other details of what is expected under this clause can be found in the statutory guidance issued by Government under section 29 of the CTSA.

* 1. Under no circumstances shall the Service Provider permit any resources to which it is given access or use under this Agreement to be used to provide a platform for extremists or to disseminate extremist views.
	2. Where the Service Provider identifies or suspects that someone may be engaged in illegal terrorist related activity, it must refer such person or activity to the police.
	3. The Service Provider shall ensure that it complies with all applicable requirements of the Modern Slavery Act 2015 including (where applicable) the requirement under section 54 to publish an annual statement. It shall be a condition of this Agreement that the Service Provider does not commit an offence under that Act, whether in relation to the Services or otherwise.
1. **NOT USED**
2. **Freedom of Information**
	1. The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 (“EIR”) and shall assist and cooperate with the Council to enable the Council to comply with these Information disclosure requirements at no cost to the Council.
	2. The Council shall be responsible for determining at its absolute discretion whether Information is exempt from disclosure in accordance with the provisions of the FOIA or EIR.
	3. The Service Provider acknowledges that the Council may, acting in accordance with the Secretary of State’s Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

 (a) without consulting with the Service Provider; or

 (b) following consultation with the Service Provider and having taken its views into account,

provided always that where clause 17.3 (a) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advance notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

1. **Confidentiality**
	1. Each Party:-
2. shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
3. shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement
	1. Clause 18.1 shall not apply to any disclosure of information:
4. made by the Council under clause 17 above in response to requests subject to the FOIA and/or EIR;
5. required by any applicable law;
6. that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Agreement;
7. where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 18.1;
8. which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
9. by the Council to any other department, office or agency of the Government; or
10. by the Council relating to this Agreement and in respect of which the Service Provider has given its prior written consent to disclosure.
	1. Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
	2. The Council shall be entitled to disclose to any Replacement Provider any Confidential Information of the Service Provider which relates to the performance of the Agreement by the Service Provider. In such circumstances the Council shall authorise the Replacement Provider to use such Confidential Information only for purposes relating to the performance of the Agreement and for no other purposes and shall take all reasonable steps to ensure that the Replacement Provider accepts an obligation of confidence.
	3. The Service Provider shall not without prior Approval:

(a) make any press announcements or publicise this Agreement or its contents in any way; or

(b) use the Council’s name or brand in any promotion or marketing or announcement of orders.

1. **Intellectual Property Rights**
	1. The Service Provider shall procure the assignment to the Council of all of the following rights throughout the world (both rights already in existence and those arising in future):
2. the entire copyright and all other rights in the nature of copyright subsisting in the Works and in all preliminary drafts or earlier versions of the Works
3. any database right subsisting in the Works and in all preliminary drafts or earlier versions of the Works; and
4. all other rights in the Works of whatever nature, whether now known or created in the future, to which the Service Provider is now, or at any time after the date of this agreement may be, entitled by virtue of the laws in force in the United Kingdom and in any other part of the world,
5. in each case including any renewals, reversions, revivals and extensions and together with all related rights and powers arising or accrued.
	1. It is a condition of this Agreement that the Services will not infringe any Intellectual Property Rights of any third party and the Service Provider shall during and after the Contract Period on written demand indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever which the Council may suffer or incur as a result of or in connection with any breach of this clause.
	2. At the termination of the Agreement the Service Provider shall at the request of the Council immediately return to the Council all materials, work or records held including any back-up media.
	3. Where the Service Provider is provided with or permitted to access Intellectual Property Rights belonging to the Council, including any Foreground Intellectual Property Rights, those Intellectual Property Rights shall remain the property of the Council, and the Service Provider shall not use or disclose them without prior Approval except where necessary for the performance of this Agreement.
6. **Indemnity and Insurance**
	1. Subject to clauses 20.2 and 21, the Service Provider shall indemnify the Council and keep the Council indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Service Provider of its obligations under this Agreement or the presence of the Service Provider or any Employees on Council premises, including (without limitation) in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Service Provider, or any other loss which is caused directly or indirectly by any act or omission of the Service Provider.
	2. The Service Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under this Agreement.
	3. Without prejudice to the foregoing the Service Provider shall maintain insurance with the following limits of indemnity for any one occurrence or series of occurrences arising out of any one event :-
		1. Employers’ Liability Insurance in respect of the Service Provider’s Employees in compliance with the Employers’ Liability (Compulsory Insurance) Act 1969 and any Order thereunder or amendment thereto to a limit of not less than five million pounds for each and every claim; and
		2. Public Liability Insurance in respect of any liability damage loss expense cost claim or proceedings in respect of personal injury to or death of any person (including any employee of the Council or the Service Provider) or injury or damage to any property arising out of or in connection with the performance of the Service for a limit of indemnity of not less than five million pounds for each and every claim; and

 Such insurance cover is to be maintained throughout the Contract Period (and, in the case of the Professional Indemnity Insurance, also for a period of 6 years thereafter) with a well-established insurance provider or underwriter of good repute. The Service Provider shall promptly produce for inspection documentary evidence as and when required by the Council that the insurance so required is properly maintained.

* 1. The Service Provider shall immediately upon receipt of a claim made against it under this Agreement notify its insurer of the claim.
	2. The Service Provider shall give immediate written notice to the Council in the event of the cancellation or a material change in the terms of any of the required insurance policies.
1. **Limitation of Liability**
	1. Subject to clauses 21.2 and 21.5, neither the Council nor the Service Provider shall be liable to the other for:
		1. loss of profits, business, revenue or goodwill;
		2. loss of savings (whether anticipated or otherwise); or
		3. indirect or consequential loss or damage.
	2. For the purposes of clause 21.1.3, the following shall not be treated as indirect or consequential losses or damages:-
		1. any additional operational and/or administrative expenses arising from a Service Provider Default;
		2. any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from a Service Provider Default;
		3. the additional cost of procuring replacement services for the remainder of the Contract Period following termination of this Agreement as a result of a Service Provider Default; and
		4. liabilities, costs and/or expenses (including legal expenses) incurred by the Council in connection with a claim from a third party arising out of a Service Provider Default.
	3. Subject to clause 21.5 below, the Council’s total aggregate liability in respect of all claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement (other than in respect of a failure to pay the Charges where they are properly due and payable, for which the Council shall remain fully liable), shall in no event exceed £5 million.
	4. Subject to clause 21.5 below, the Service Provider's total aggregate liability in respect of all claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement, shall in no event exceed £5 million (“the Financial Cap”). Provided that if the Service Provider is required by this Agreement to maintain an insurance policy in respect of the liability in question and the proceeds of the policy in respect of the liability would have exceeded the Financial Cap, the Financial Cap shall be increased to reflect the value of the proceeds that would be payable under the insurance policy (and for these purposes it shall be assumed that the insurance policy has been properly maintained and complied with by the Service Provider and a claim properly made under it).
	5. Notwithstanding any other provision of this Agreement:
		1. neither Party limits or excludes its liability for (a) fraud or fraudulent misrepresentation; (b) death or personal injury caused by its negligence; (c) breach of any obligation as to title implied by statute; or (d) any other act or omission for which that Party is not, under applicable law, permitted to limit or exclude its liability; and
		2. the Service Provider’s liability in respect of the indemnities given by the Service Provider in clauses 16.6 (data protection indemnity) and 19.4 (intellectual property rights indemnity).
2. **Default Notices**
	1. If in its reasonable opinion the Council believes that there has been a Service Provider Default then the Council shall be entitled to serve a Default Notice upon the Service Provider. This will be without prejudice to any other right or remedy which may be available to the Council either under this Agreement or at law.
	2. When the Council serves a Default Notice the Service Provider shall take such remedial action as is specified in the Default Notice within the timescale set out and at the Service Provider’s sole cost.
	3. If the Service Provider fails to complete the remedial action within the specified time detailed in the Default Notice then the Council shall be entitled to:
3. apply clause 23.1(a); or
4. suspend the Service until the Service Provider has satisfactorily completed the remedial action. If within a period of 10 Working Days from the date of the Service being suspended, the Service Provider has still failed to complete the remedial action, then the Council shall be entitled to apply clause 23.1(b).
5. **Termination on Default, Change of Control & Insolvency**
	1. The Council may terminate this Agreement in whole or in part by notice in writing with immediate effect if:
		1. the Service Provider fails to remedy a Service Provider Default in accordance with a Default Notice served under clause 22;
		2. the Service Provider fails to remedy a Service Provider Default following a period of suspension under clause 22.3(b);
		3. the Service Provider commits a Service Provider Default which is not capable of being remedied;
		4. the Service Provider commits a Serious Default;
		5. the Service Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
		6. the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors (otherwise than for the purpose of solvent amalgamation or reconstruction);
		7. the service provider applies to the court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
		8. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Service Provider (being a company) (otherwise than for the purpose of solvent amalgamation or reconstruction);
		9. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Service Provider (being a company);
		10. the holder of a qualifying floating charge over the assets of the Service Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
		11. a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;
		12. the Service Provider (being an individual) is the subject of a bankruptcy petition or order;
		13. a creditor or encumbrancer of the Service Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Service Provider’s assets and such attachment or process is not discharged within 14 days;
		14. the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
		15. any event occurs, or proceeding is taken, with respect to the Service Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 23 e) to n) above;
		16. the Service Provider (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;
		17. if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Service Provider to which the Council reasonably objects; or
		18. if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.
	2. If this Agreement is terminated by the Council for cause (including under any of the provisions of clause 23.1) such termination shall be at no loss or cost to the Council and the Service Provider hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.
	3. The Council may terminate this Agreement by notice in writing with immediate effect where an award for ineffectiveness of this Agreement is made under the Public Contracts Regulations 2015 or if legal proceedings seeking such an award are brought against the Council and the Council considers that such an award will be made.
	4. If the Council does not make payment of undisputed sums due under this Agreement within 60 days of the due date, the Service Provider may serve notice on the Council requiring the Council to make payment, and if the Council fails to make payment within 30 days of such notice, the Service Provider may terminate this Agreement with immediate effect on written notice to the Council.
6. **General Termination**
	1. The Council may terminate this Agreement for convenience at any time on giving not less than one week’s notice to the Service Provider.
	2. Should the Service be de-commissioned by the Government or should the Council’s funding for the Service be withdrawn, the Council reserves the right to terminate this Agreement by written notice with immediate effect.
7. **Consequences of Termination**
	1. At the termination of this Agreement (howsoever arising) the Service Provider shall at its own cost provide assistance to the Council and any Replacement Provider appointed by the Council to continue or take over the performance of the Agreement in order to ensure an effective handover of the Services.
	2. Without prejudice to the generality of clause 25.1, upon the termination of this Agreement (howsoever arising) the Service Provider shall forthwith deliver to the Council upon request all the Council’s property (including but not limited to materials, documents, records, information and access keys) relating to this Agreement in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and, in default of compliance with this clause, the Council may recover possession thereof and the Service Provider grants licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted suppliers or Sub-Contractors where any such items may be held.
	3. Termination of this Agreement shall be without prejudice to any rights remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.
	4. The provisions of the following clauses shall survive termination or expiry of this Agreement (in addition to those provisions which are, elsewhere in this Agreement, stated to continue following termination): clause 16 (Data Protection), clause 17 (Freedom of Information), clause 18 (Confidentiality), clause 20 (Indemnity and Insurance), clause 21 (Limitation of Liability), clause 23 (Termination for Breach), clause 30 (Audit), and this clause 25 (Consequences of Termination).
8. **Force Majeure**
	1. In the event that the performance of any obligation under this Agreement is prevented by reason of circumstances including act of god, fire, flood, civil disobedience, governmental acts or regulation or industrial action (other than by the Parties’ employees) which are unforeseen and beyond the control of the Party obliged to perform it (a “Force Majeure Event”) the Party so affected (upon giving prompt notice in writing to the other Party) shall be excused from the performance to the extent of the prevention restriction or interference, provided that the Party so affected shall use all reasonable endeavours to avoid or remove the cause of non-performance and shall continue performance under this Agreement with the utmost dispatch whenever such cause is removed or diminished, provided always that COVID-19 and Brexit and their impacts including associated Government acts and regulation shall be treated as foreseeable by and within the control of the Parties.
	2. If a Force Majeure Event prevents either Party from performing any of its obligations under this Agreement for a period in excess of one month from the first day of the Force Majeure Event either Party may terminate this Agreement by notice in writing with immediate effect.
9. **Dispute Resolution**
	1. In the event of any dispute between the Parties arising out of or in connection with the Agreement, either Party may call a meeting of the Parties by service of not less than 5 days' written notice, and each Party agrees to procure that its representative together with any other Employee requested to attend by the Council (if any) shall attend any such meeting. The members of the meeting shall use their reasonable endeavours to resolve the dispute.
	2. If any dispute referred to a meeting pursuant to clause 27.1 is not resolved at that meeting then either Party, by notice in writing to the other, may refer the dispute to director-level for resolution, and the Parties’ respective directors bearing managerial responsibility for this Agreement shall co-operate in good faith to resolve the dispute as amicably as possible within 28 days of service of such notice (and, for these purposes, an Assistant Director of the Council shall be treated as a director).
	3. If the directors fail to resolve the dispute in the allotted time, then the Dispute Resolution Procedure shall be deemed exhausted and either Party may commence or continue court proceedings in respect of such unresolved dispute or issue.
	4. Nothing in this clause 27 shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
10. **TUPE – NOT USED**
11. **Assignment and Sub-Contracting**
	1. Subject to clause 29.3, the Service Provider shall not assign, novate or otherwise transfer any benefit, duty or obligation under this Agreement or any right or remedy available to it hereunder.
	2. The Service Provider shall not sub-contract to or allow any other person to perform any part of the Services without obtaining prior Approval. Any such sub-contracting shall not in any way relieve the Service Provider from its liabilities hereunder and the Service Provider shall be and shall remain fully responsible in respect of the Service notwithstanding such sub-contracting.
	3. If the Service Provider has requested and obtained from the Council prior Approval, the Service Provider shall be entitled to novate this Agreement where:

(a) the specific change in contractor was provided for in the procurement process for the award of this Agreement;

(b) there has been a universal or partial succession into the position of the Service Provider, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this Agreement.

* 1. The Council shall be entitled to novate this Agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.
1. **Audit**
	1. The Service Provider shall keep and maintain until six years after the Contract Period full and accurate records of the Agreement including the Services provided under it and all payments made by the Council. The Service Provider shall on request afford the Council or the Council’s representatives or any auditing body appointed by the Government such access to those records as may be required in connection with the Agreement.
2. **Notices**
	1. Any notice required or authorised to be given by either Party under this Agreement to the other Party shall be in writing and shall either be delivered personally or sent by pre-paid post or by electronic mail or facsimile transmission to the other Party at the address stated in this Agreement or such other address as may be specified by the Parties by notice to the other from time to time and shall be deemed duly served:
		1. in the case of a notice delivered personally at the time of delivery; or
		2. in the case of a notice sent by either first or second class pre-paid post three clear Working Days after being posted; or
		3. in the case of an electronic mail or facsimile transmission if sent during normal business hours then at the time of that transmission and if sent outside normal business hours then on the next following Working Day provided (in each case) that a confirmatory copy is sent by pre-paid post or by hand by the end of the next Working Day

Both Parties shall promptly notify the other upon any change of address or facsimile number occasioned during the Contract Period.

1. **Waiver**

 The failure of either Party to insist upon strict performance of any provision of the Agreement or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Agreement.

1. **Remedies Cumulative**

 Except as otherwise expressly provided by the Agreement all remedies available to either Party for breach of the Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

1. **Severability**
	1. If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid illegal or unenforceable provision eliminated.
	2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement the Parties shall immediately commence negotiations in good faith to remedy the invalidity.
2. **Entire Agreement**
	1. This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
	2. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
	3. Nothing in this clause limits or excludes any liability for fraud.
3. **Miscellaneous**
	1. The Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England.
	2. The Service Provider shall not be relieved of its obligations to perform the Services in accordance with the terms of the Agreement as the result of a change of law which comes into effect after the Commencement Date.
	3. Nothing in this Agreement shall be construed as constituting a partnership or contract of employment between the Council and the Service Provider. Nothing in this Agreement shall be construed as constituting either Party as the agent of the other for any purpose whatsoever except as specified by the terms of this Agreement.
	4. Save to the extent expressly stated in this Agreement, nothing in this Agreement shall confer or purport to confer the right to enforce any term hereunder upon any person or legal entity that is not a Party to it and the Contracts (Rights of Third Parties) Act 1999 shall not apply.
	5. This Agreement shall not be varied except by instrument in writing signed by the authorised representatives of the Parties.
	6. This Agreement may be executed and delivered in any number of counterparts, each of which is an original and which, together, have the same effect as if each Party had signed the same document.

The Parties have executed and delivered this Agreement on the date stated at the beginning of it.

Signed for and on behalf of the

**COUNCIL OF THE CITY OF STOKE-ON-TRENT**

Authorised Signatory

Print Name

Signed for and on behalf of

**[INSERT NAME OF SERVICE PROVIDER]**

Authorised Signatory

Print Name

**Appendix 1**

**The Specification**

**[INSERT SPECIFICATION UPON TENDER AWARD]**

**Appendix 2**

**Pricing Schedule**

The total Charges for the Services (including all expenses) are £[ ] (exclusive of VAT) to be paid in accordance with the following milestones:

**Milestones Charges (excluding VAT) Invoice Date**

|  |  |  |
| --- | --- | --- |
|  |  |  |
|   |  |  |
|  |  |  |
|  |  |  |

**Additional Services**

Provision of any additional services will be subject to prior written approval of a quotation from the Service Provider by the Council, to be calculated using the following rates (exclusive of VAT):

[INSERT TENDER RATE FOR ADDITIONAL SERVICES]

For the avoidance of doubt attendance of the Service Provider as an independent witness at any examination will be an additional service subject to prior written agreement by the Council at the above rates.

**APPENDIX 3**

**TENDER RESPONSE**