

**VECTIS HOUSING ASSOCIATION  
LIMITED**

**GROUNDS MAINTENANCE  
CONTRACT**

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**THIS AGREEMENT** made the                      day of

**BETWEEN**

- (1) **VECTIS HOUSING ASSOCIATION LIMITED** a registered society under the Co-operative and Community Benefit Societies Act 2014 (registration number: 21237R) whose registered office is at Chapel House, 30 Chapel Street, Newport, Isle of Wight, PO30 1PZ (**VHA**)
  
- (2) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (**Supplier**).

**BACKGROUND**

- (A) VHA placed a contract notice **[REFERENCE]** on the Find a Tender Service seeking expressions of interest from potential suppliers for the provision of the Services (as defined below).
  
- (B) VHA has, through a competitive process, selected the Supplier to provide these Services and the Supplier is willing and able to provide the Services in accordance with the terms and conditions of this agreement.
  
- (C) Accordingly, the parties have agreed to enter into a contract for the provision of the Services on the terms and conditions of this agreement.

**CONTRACT TERMS**

**1. DEFINITIONS AND INTERPRETATION**

1.1 The following definitions and rules of interpretation in this clause apply in this agreement.

**"Achieved KPIs"**                      in respect of any Service in any measurement period, the standard of performance actually achieved by the Supplier in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Schedule 2).

**"Best Industry Practice"**        the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors

such as the nature and size of the parties, the KPIs, the term, the pricing structure and any other relevant factors.

**"Charges"** the charges which shall become due and payable by VHA to the Supplier in respect of the Services in accordance with the provisions of this agreement, as set out in Schedule 3.

**"Commencement Date"** [insert start date].

**"Confidential Information"** all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party or its Representatives in connection with this agreement, including but not limited to:

- (a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- (b) any information developed by the parties in the course of carrying out this agreement;
- (c) Personal Data;
- (d) any Commercially Sensitive Information.

**"Contract Managers"** the persons designated as contract manager by VHA and the Supplier respectively, the first such persons being set out in Schedule 2.

**"Contract Year"** any 12-month period starting on the Commencement Date and on each anniversary of the Commencement Date.

**"Controller"** has the meaning set out in the Data Protection Laws.

**"Data Protection Laws"** all applicable data protection and privacy

legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; and the guidance and codes of practice issued by the Information Commissioner and applicable to a party.

<b>“Data Subject”</b>	has the meaning set out in the Data Protection Laws.
<b>“Default Notice”</b>	as defined in clause 12.1.
<b>“Expiry Date”</b>	[insert date / the fifth anniversary of the Commencement Date] as may be amended in the event of extension in accordance with clause 3.
<b>“Force Majeure”</b>	shall mean: <ul style="list-style-type: none"><li>(a) acts of God, flood, drought, earthquake or other natural disaster;</li><li>(b) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;</li><li>(c) nuclear, chemical or biological contamination or sonic boom.</li></ul>
<b>“Health and Safety Policy”</b>	the health and safety policy of VHA as provided to the Supplier on or before the Commencement Date and as subsequently provided to the Supplier from time to time.
<b>“Information Commissioner”</b>	means the UK’s supervisory authority for information rights, as defined in section 3(8) of the Data Protection Act 2018.
<b>“Information Disclosure Obligations”</b>	any regulatory and legal obligations applicable to VHA under which it is required to disclose information to a third party whether or not in force at the Commencement Date including any tenant access to information scheme

introduced by the Regulator of Social Housing.

**“Insolvency Event”**

where:

- (a) the Supplier 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;
- (b) the Supplier 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;
- (c) 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 Supplier (being a company, limited liability partnership or partnership);
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company, partnership or limited liability partnership);
- (e) the holder of a qualifying floating charge over the assets of the Supplier (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (g) a creditor or encumbrancer of the Supplier 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 other party's assets and such attachment or process is not discharged within 14 days;

- (h) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive); or
- (i) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

**“KPIs”** the key performance indicators set out in Schedule 2.

**“KPI Target”** the minimum level of acceptable performance for a KPI which is required by VHA as set out against the relevant KPI in Schedule 2.

**“Law”** the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Supplier is bound to comply.

**“Management Reports”** the reports to be prepared and presented by the Supplier in accordance with Schedule 2.

**“Necessary Consents”** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.

**“Regulated Activity”** in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

<b>“Representatives”</b>	in relation to a party, its employees, officers, suppliers, sub-contractors, representatives and advisors.
<b>“Required Insurances”</b>	the insurances that the Supplier is to effect and maintain as stated in clause 33.1.
<b>“Personal Data”</b>	has the meaning set out in the Data Protection Laws.
<b>“Personal Data Breach”</b>	has the meaning set out in the Data Protection Laws.
<b>“Processing”</b>	has the meaning set out in the Data Protection Laws and “Process” and “Processed” shall be construed accordingly.
<b>“Service Improvement Plan”</b>	a plan agreed under the Service Improvement Process.
<b>“Service Improvement Process”</b>	The process detailed in clause 12.3
<b>"Services"</b>	the services to be provided by or on behalf of the Supplier under this agreement, as more particularly described in the Specification (Schedule 1).
<b>“Specification”</b>	the specification of the Services (as applicable) in Schedule 1 as may be varied in accordance with clause 9.
<b>"Sub-Contract"</b>	any contract or agreement, or proposed contract or agreement, between the Supplier and a third party pursuant to which that third party agrees to carry out any obligations of the Supplier under this agreement.
<b>"Sub-Contractor"</b>	the third parties that enter into a Sub-Contract with the Supplier.
<b>"Supplier Personnel"</b>	all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

<b>"Supplier's Tender"</b>	the tender submitted by the Supplier and other associated documentation set out in Schedule 4.
<b>"Term"</b>	from the Commencement Date to the Expiry Date or earlier termination date.
<b>"UK GDPR"</b>	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
<b>"VHA Sites"</b>	the sites identified in the Specification as may be varied in accordance with clause 9.
<b>"TUPE"</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 ( <i>SI 2006/246</i> ).
<b>"Working Day"</b>	Monday to Friday, excluding any public holidays in England.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 A reference to **writing** or **written** includes email.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to this agreement or to any other agreement or document is a reference to this agreement or such other agreement or document as varied from time to time.
- 1.8 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.9 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.

- 1.11 Any words following the terms including, include, in particular 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.
- 1.12 If there is any conflict or inconsistency between the provisions in the main body of this agreement and the schedules, such conflict or inconsistency shall be resolved according to the following order of priority:
  - 1.12.1 the Contract Terms;
  - 1.12.2 Schedule 1 to this agreement;
  - 1.12.3 the remaining schedules to this agreement other than Schedule 4 (Supplier's Tender);
  - 1.12.4 Schedule 4 (Supplier's Tender) to this agreement.

## **COMMENCEMENT & DURATION**

### **2. Term**

- 2.1 The agreement shall take effect on the Commencement Date and shall expire automatically on the Expiry Date subject to:
  - 2.1.1 VHA's right to extend this agreement under clause 3; and
  - 2.1.2 earlier termination in accordance with the provisions of this agreement.

### **3. Extension**

- 3.1 VHA may extend this agreement by giving not less than six months' written notice to the Supplier specifying the duration of the extension and the new Expiry Date.
- 3.2 The maximum period of extension under clause 3 shall be five years and VHA may extend the agreement in one or more periods (at its discretion) up to this total aggregate period of five years. If VHA gives such notice then the Term shall be extended by the period set out in the notice.

## **THE SERVICES**

### **4. Supply of Services**

- 4.1 The Supplier shall provide the Services to VHA from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement, including the Specification (Schedule 1) and Schedule 2.

### **5. Service standards**

- 5.1 The Supplier shall provide the Services (or procure that they are provided):

- 5.1.1 in accordance with the Specification ensuring that the Services conform with all descriptions, standards and specifications set out in the Specification;
  - 5.1.2 in accordance with all timescales and dates for performance detailed in the Specification;
  - 5.1.3 with all due skill and care and in accordance with Best Industry Practice;
  - 5.1.4 in accordance with all instructions of VHA; and
  - 5.1.5 in accordance with all applicable Law and Necessary Consents (which the Supplier shall obtain and maintain at its own cost).
- 5.2 In providing the Services, the Supplier shall:
- 5.2.1 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - 5.2.2 use the best quality goods, materials, standards and techniques.

## **6. KPIs**

- 6.1 The Supplier shall provide its obligations under this agreement in such a manner as will ensure that the Achieved KPI is equal to or higher than the corresponding KPI Target for such specific KPI.
- 6.2 If the existing Services are varied or new Services are added, KPI Targets for the same will be determined and included within Schedule 2.
- 6.3 VHA will monitor the Achieved KPIs in accordance with Schedule 2.

## **7. Exclusivity**

- 7.1 The Supplier acknowledges and agrees that:
  - 7.1.1 the supply of the Services is not granted to the Supplier on an exclusive basis;
  - 7.1.2 VHA has the right to refer orders and instructions for the same or similar services to the Services to other suppliers or to carry them out itself.

## **8. Use of VHA Sites**

- 8.1 VHA shall provide the Supplier (and its Sub-Contractors) with access to such parts of the VHA Sites as the Supplier reasonably requires for the purposes only of providing the Services. The Supplier's right of access will terminate upon termination of this agreement and all equipment belonging to the Supplier shall be promptly removed by the Supplier.
- 8.2 The Supplier shall ensure that:

- 8.2.1 where using VHA Sites they are kept properly secure, and it will comply and cooperate with VHA's security requirements from time to time regarding the security of the same;
- 8.2.2 only those of the Supplier's Personnel that are duly authorised to enter upon VHA Sites for the purposes of providing the Services do so and that all Supplier Personnel wear a uniform which is branded with the Supplier' logo and carry identification at all times when on the VHA Sites (such identification to be presented on request);
- 8.2.3 it uses vehicles which are branded jointly with the Supplier's and VHA's logo (such branding to be approved in advance by VHA in writing);
- 8.2.4 no items are stored at the VHA Sites at any time (unless explicitly agreed in writing by VHA Contract Manager).
- 8.3 The Supplier shall notify VHA immediately on becoming aware of any damage caused by the Supplier or its Representatives to any of VHA Sites or other property of VHA or to any property of any other recipient of the Services in the course of providing the Services.
- 8.4 The Supplier shall indemnify VHA against all and any damage to VHA Sites and to any property of any other recipient of the Services in the course of providing the Services caused by the Supplier or the Supplier's Representatives.

## **9. Changes to Scope or Sites**

- 9.1 Where VHA intends to make any changes to the Services or a VHA Site it will carry out reasonable prior consultation with the Supplier in this regard (without prejudice to VHA's rights under clause 9.2).
- 9.2 VHA may, by giving not less than one months' notice to the Supplier:
  - 9.2.1 change the scope or specification of the Services to be provided at any VHA Site(s). This may include adding to the Services or removing an element of the Services to be provided at the VHA Site(s), reducing or increasing the frequency of the provision of the Services (or part of them) at the VHA Site(s) or changing the manner of delivery of the Services;
  - 9.2.2 decrease or increase the size of a VHA Site (for example where properties are added to or removed from the VHA Site);
  - 9.2.3 remove a VHA Site from this agreement;
  - 9.2.4 add a new site to this agreement which shall become a VHA Site.
- 9.3 The notice given under clause 9.2 shall set out the details of the change be made, the date that this is take effect and the impact on the Charges (with any changes that result in a financial implication to be consulted with residents before going ahead) and this will be a variation to the Specification from the date specified.

9.4 Following any change of scope of the Services, decrease of size or removal of a VHA Site, VHA reserves the right to appoint a replacement supplier to carry out those Services (or any part of them). VHA shall not be liable to the Supplier for any costs, expenses, loss or damages incurred or suffered by the Supplier as a consequence of such change of scope of the Services, decrease of size or removal of a VHA Site under this provision or as a consequence of the appointment of a replacement supplier by VHA.

## **10. Compliance**

10.1 The Supplier shall (and shall procure that the Supplier Personnel shall) perform its obligations under this agreement in accordance with:

10.1.1 all applicable Law regarding health and safety; and

10.1.2 the Health and Safety Policy whilst at VHA Sites and all health and safety rules and regulations and any other reasonable security requirements that apply at the VHA Sites from time to time.

10.1.3 all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

10.1.4 any other requirements and instructions which VHA reasonably imposes in connection with any equality obligations imposed on VHA at any time under applicable equality law.

10.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at VHA Sites of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

## **RIGHTS AND REMEDIES**

### **11. VHA's rights and remedies**

11.1 If the Supplier has failed to provide the Services (or any part of the Services) by the applicable dates and/or has performed Services that do not comply with the requirements of this agreement (including Clauses 4.1 and 5.1) then, without limiting or affecting other rights or remedies available to it, VHA shall have one or more of the following rights:

11.1.1 to implement the Service Improvement Process set out in clause 12;

11.1.2 to require the Supplier to re-perform the Services in accordance with the requirements of the agreement;

11.1.3 to refuse to pay the Charges for, or (if paid), to require a refund from the Supplier of Charges paid in advance for Services that the Supplier has not provided by the applicable date or in accordance with the requirements of the agreement;

- 11.1.4 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- 11.1.5 to carry out the Services (or any part of the Services) itself or pay a third party to do so and recover from the Supplier any costs and expenditure incurred by VHA in carrying out such Services or obtaining substitute services from a third party which shall be recoverable as a debt or by way of set-off from amounts due to the Supplier; and
- 11.1.6 to claim damages for any additional costs, loss or expenses incurred by VHA arising from the Supplier's failure.
- 11.2 These Clauses shall extend to any substituted or remedial services supplied by the Supplier.
- 11.3 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law (including rights or remedies provided or implied by statute or common law).

## **12. Service Improvement Process**

- 12.1 If the Supplier is in breach of this agreement, including any failure to comply with the Specification, VHA may (at its discretion) serve a notice on the Supplier setting out the details of the Supplier's breach and the timescale required for this to be remedied and whether VHA requires the Supplier to comply with the Service Improvement Process ("**Default Notice**").
- 12.2 Where the breach is capable of remedy the Supplier shall remedy the default within the timescale stated in the Default Notice and/or where required by VHA shall comply with the Service Improvement Process set out in clause 12.3.
- 12.3 The Service Improvement Process is as follows:
  - 12.3.1 within five Working Days of VHA's notification under clause 12.1 the Supplier shall meet with VHA to discuss the default and areas for improvement;
  - 12.3.2 within five Working Days of the date of the meeting the Supplier shall submit a draft Service Improvement Plan detailing the steps to be taken and timescale by which such steps shall be completed;
  - 12.3.3 VHA shall either approve the draft Service Improvement Plan within five Working Days of its receipt or it shall inform the Supplier why it cannot accept the draft Service Improvement Plan. In such circumstances, the Supplier shall address all such concerns in a revised Service Improvement Plan, which it shall submit to VHA within five Working Days of its receipt of VHA's comments. If no such notice is given, the Supplier's draft Service Improvement Plan shall be deemed to be agreed;



- 12.3.4 once agreed, the Supplier shall immediately start work on the actions set out in the Service Improvement Plan;
- 12.3.5 if, despite the measures taken under this clause a Service Improvement Plan cannot be agreed within 30 Working Days of VHA's notification under clause 12.1, VHA may elect to end the Service Improvement Plan Process and terminate this agreement under clause 37.1.5;
- 12.3.6 if a Service Improvement Plan is agreed between the parties, but the Supplier fails to implement or successfully complete the Service Improvement Plan by the required dates, VHA may:
- (a) terminate this agreement under clause 37.1.6;
  - (b) give the Supplier a further opportunity to resume full implementation of the Service Improvement Plan; or
  - (c) escalate any issues arising out of the failure to implement the Service Improvement Plan under clause 15 (Dispute Resolution).

### **13. Suspension of Services**

- 13.1 In the event that VHA is of the reasonable opinion that the Supplier is in material breach of this agreement or that there may be grounds for termination of the agreement, then VHA may, without prejudice to its rights under clause 37, suspend the performance of all or part of the Services by the Supplier under this agreement, until such time as the Supplier shall have demonstrated to the reasonable satisfaction of VHA that the Supplier will once more be able to supply all or such part of the Services in accordance with the agreement.
- 13.2 During the period of suspension:
- 13.2.1 the Supplier shall provide all reasonable assistance to VHA in relation to its investigation into the breach;
  - 13.2.2 the Charges shall not be payable in relation to the suspended Services;
  - 13.2.3 VHA may elect to implement a Service Improvement Process;
  - 13.2.4 VHA may itself supply or procure a third party to supply the suspended Services and VHA may charge the Supplier for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by VHA or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that VHA uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

### **14. Complaints**

14.1 Where a complaint is received about the standard of Services or about the manner in which the Services have been supplied or performed or about any other matter connected with the performance of the Supplier's obligations under this agreement, then VHA shall notify the Supplier, and where considered appropriate by VHA, investigate the complaint. VHA may, in its sole discretion, uphold the complaint and take further action in accordance with this agreement including electing to implement a Service Improvement Plan or terminate this agreement in accordance with clause 37.1.

## **15. Dispute resolution**

15.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

15.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Contract Managers shall attempt in good faith to resolve the Dispute;

15.1.2 if the Contract Managers are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to VHA's Company Secretary (or equivalent, or any other employee notified in writing to the Supplier) and the Supplier's Chief Executive (or equivalent) who shall attempt in good faith to resolve it; and

15.1.3 if VHA's Chief Executive (or equivalent) and the Supplier's Chief Executive (or equivalent) are for any reason unable to resolve the Dispute within 14 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. The mediation will start not later than 28 days after the date of the ADR notice.

15.2 The requirements of this clause or the commencement of mediation under this clause shall not prevent the parties from:

15.2.1 commencing or continuing court proceedings in relation to the Dispute under clause 50 which clause shall apply at all times;

15.2.2 exercising their rights and remedies under this agreement including termination rights under clause 37 and 38.

## **DUE DILIGENCE & WARRANTIES**

### **16. Due diligence**

16.1 The Supplier acknowledges and confirms that:

- 16.1.1 VHA has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this agreement;
  - 16.1.2 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of VHA pursuant to clause 16.1.1;
  - 16.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with VHA before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement including the VHA Sites; and
  - 16.1.4 it has entered into this agreement in reliance on its own due diligence.
- 16.2 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by VHA in respect of any information which is provided to the Supplier by VHA and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

## **17. Warranties**

### **17.1 The Supplier:**

- 17.1.1 warrants and represents that all information and statements made by the Supplier as a part of the procurement process, including the Supplier's Tender or response to any selection questionnaire (if applicable), remains true, accurate and not misleading, save as may have been specifically disclosed in writing to VHA prior to execution of the agreement; and
- 17.1.2 shall promptly notify VHA in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by VHA which materially and adversely affects its ability to perform the Services or meet any KPI Target.

## **FINANCIAL ARRANGEMENTS**

## **18. Charges**

- 18.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this agreement, VHA shall pay the Charges to the Supplier as detailed in Schedule 3.
- 18.2 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to VHA pursuant to this agreement. Such records shall be retained for inspection by VHA for six years from the end of the Contract Year to which the records relate.
- 18.3 The Supplier shall allow VHA and its third party representatives to audit any of the

Supplier's records and any other relevant documentation in accordance with clause 18.2.

## **19. Invoices & payment**

19.1 The Supplier shall invoice VHA for payment of the Charges at the end of each calendar month. All invoices shall be directed to the VHA Contract Manager and shall contain such information as VHA may inform the Supplier from time to time.

19.2 VHA shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which VHA has determined that the invoice is valid and undisputed.

## **20. Disputed invoices**

20.1 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 15. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 30 days after resolution of the dispute between the parties.

20.2 Subject to clause 20, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with clause 23. The Supplier shall not suspend the supply of the Services if any payment is overdue.

## **21. VAT**

21.1 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by VHA following delivery of a valid VAT invoice. The Supplier shall indemnify VHA against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on VHA at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.

## **22. Set Off**

22.1 VHA may at any time, set off any liability of the Supplier to VHA against any liability of VHA to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. Any exercise by VHA of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.

22.2 All amounts due under this agreement from the Supplier to VHA shall be paid in full without any set-off, counterclaim, deduction or withholding (other than deduction or withholding tax as required by law).

## **23. Interest for late payment**

23.1 If VHA fails to make any payment due to the Supplier under the Agreement by the due

date for payment, VHA shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 3% a year above the Bank of England's base rate from time to time (but at 3% a year for any period when that base rate is below 0%).

## STAFFING

### 24. Supplier Personnel

24.1 The Supplier shall provide VHA with a list of all Supplier Personnel which will be involved in the delivery of the Services and obtain VHA's prior written approval to the use of such Supplier Personnel in the provision of the Services on or before the Commencement Date. The Supplier shall notify VHA of any changes to this list arising throughout the Term and obtain VHA's prior approval in relation to each such change. VHA shall notify the Supplier where it does not approve any Supplier Personnel and may provide reasons, but is not required to do so.

24.2 At all times, the Supplier shall ensure that:

24.2.1 each of the Supplier Personnel is suitably qualified, adequately trained and capable of carrying out the obligations under this agreement in respect of which they are engaged;

24.2.2 there is an adequate number of Supplier Personnel to the Services properly;

24.2.3 only those people who are approved by VHA under clause 24.1 are involved in providing the Services; and

24.2.4 all of the Supplier Personnel comply with all of VHA's policies; and

24.2.5 all Supplier Personnel wear a uniform which is branded with the Supplier' logo and carry identification at all times when providing the Services and when on the VHA Sites (such identification to be presented on request).

24.3 VHA may refuse to grant access to VHA Sites, and remove, any of the Supplier Personnel who do not comply with any such policies, or if they otherwise present a security threat or whose admission or continued presence would (in the reasonable opinion of VHA) be undesirable.

24.4 The Supplier shall replace any of the Supplier Personnel who VHA reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the agreement.

24.5 The Supplier shall maintain up-to-date personnel records on the Supplier Personnel engaged in the provision of the Services and shall provide information to VHA as VHA reasonably requests on the Supplier Personnel (including a list of all Supplier Personnel

who the Supplier expects may require access to the VHA Sites). The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Laws.

## **25. Disclosure and Barring Service**

25.1 The Supplier shall:

25.1.1 ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and

25.1.2 monitor the level and validity of the checks under this clause for each of the Supplier Personnel;

25.1.3 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

25.2 The Supplier warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder.

25.3 The Supplier shall immediately notify VHA of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause have been met.

25.4 The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the service users.

## **26. TUPE**

26.1 The parties agree to comply with the provisions of Schedule 5 in relation to TUPE.

## **CONTRACT MANAGEMENT**

## **27. Monitoring, Reporting & Meetings**

27.1 VHA may monitor the Supplier's performance of its obligations under this agreement. The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with VHA in carrying out such monitoring at no additional charge to VHA.

27.2 The Supplier shall provide the Management Reports to VHA in the form and at the intervals set out in Schedule 2.

27.3 The parties shall meet as detailed in Schedule 2.

## **28. Variations**

28.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties, except as set out in clause 9.

## **29. Sub-contracting**

29.1 The Supplier cannot sub-contract the agreement or any part of it without VHA's prior written consent.

29.2 Where the Supplier enters into any Sub-Contract in connection with this agreement it shall:

29.2.1 remain responsible to VHA for the performance of its obligations under the agreement, notwithstanding the appointment of any Sub-Contractor, and be responsible for the acts, omissions and neglects of its Sub-Contractors;

29.2.2 impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and

29.2.3 provide a copy, at no charge to VHA, of any such Sub-Contract on receipt of a request for such by the VHA Contract Manager.

## **30. Assignment**

30.1 The Supplier cannot assign, novate or in any other way dispose of the agreement or any part of it without VHA's prior written consent.

30.2 VHA shall be entitled to novate (and the Supplier shall be deemed to consent to any such novation) the agreement to any other body which substantially performs any of the functions that previously had been performed by VHA.

## **LIABILITY & INSURANCE**

### **31. Indemnities**

31.1 The Supplier shall indemnify and keep indemnified VHA against all liabilities, costs, expenses, damages and losses and all professional costs and expenses suffered or incurred by VHA arising out of or in connection with:

31.1.1 the Supplier's breach or negligent performance or non-performance of this agreement;

31.1.2 any claim made against VHA arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier or Supplier Personnel;

31.1.3 any claim made against VHA by a third party arising out of or in connection with the Services.

## **32. Limitation of liability**

32.1 Neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement.

32.2 Notwithstanding the provisions of clause 32.1, the Supplier assumes responsibility for and acknowledges that VHA may, amongst other things, recover:

32.2.1 sums paid by VHA to the Supplier pursuant to this agreement, in respect of any services not provided in accordance with the agreement;

32.2.2 wasted expenditure;

32.2.3 additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;

32.2.4 losses incurred by VHA arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Sub-Contractor, Supplier Personnel, regulator or customer of VHA) against VHA caused by the act or omission of the Supplier; and

32.2.5 any anticipated savings.

32.3 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this agreement, including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this agreement.

32.4 Subject to Clause 32.1 and 32.6, the Supplier's liability to VHA:

32.4.1 is unlimited in respect of the Supplier's wilful default and the indemnities in Schedule 5 (TUPE) and in relation to any breach of Clause 42; and

32.4.2 in respect of all other loss or damage which does not fall within clause 32.4.1 above, shall be limited to the greater of one million pounds (£1,000,000) and 200% of the total Charges payable under the Agreement.

32.5 Subject to Clause 32.1 and 32.6, VHA shall have no liability to the Supplier for any claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which VHA shall remain fully liable).

32.6 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:



- 32.6.1 fraud or fraudulent misrepresentation;
- 32.6.2 death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);
- 32.6.3 breach of any obligation as to title implied by statute; or
- 32.6.4 any other liability for which may not be limited under any applicable law.

### **33. Insurance**

33.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company the following insurances (**Required Insurances**):

33.1.1 Public Liability insurance with a limit of indemnity not less than five million pounds (£5,000,000) in relation to anyone claim or series of claims;

33.1.2 Employer's Liability insurance with a limit of indemnity not less than ten million pounds (£10,000,000);

33.1.3 Professional indemnity insurance with a limit of indemnity not less than five million pounds (£5,000,000); and

33.1.4 Product liability insurance with a limit of indemnity not less than one million pounds (£1,000,000).

33.2 The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

33.3 The Supplier shall give VHA, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

33.4 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, VHA may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

33.5 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.

33.6 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

## **INFORMATION**

#### **34. Information disclosure obligations**

- 34.1 The Supplier shall provide all necessary assistance and cooperation reasonably requested by VHA to enable VHA to comply with Information Disclosure Obligations.
- 34.2 The Supplier shall provide VHA with a copy of all information in its possession or control that VHA requires in order to comply with the Information Disclosure Obligations within five Working Days of VHA's request for such information.
- 34.3 The Supplier acknowledges that VHA may be required under the Information Disclosure Obligations to disclose information without consulting or obtaining consent from the Supplier. VHA shall take reasonable steps to notify the Supplier of any such request to the extent that it is permissible and reasonably practical for it to do so.

#### **35. Data protection**

- 35.1 Both parties shall duly observe all their obligations under the Data Protection Laws which arise in connection with this agreement and shall not perform their obligations under this agreement in such a way as to cause the other party to breach any of its obligations under the Data Protection Laws.
- 35.2 The parties acknowledge that the sharing of Personal Data under this agreement will be limited to VHA sharing tenant Personal Data with the Supplier for the purpose of carrying out minor work/maintenance on behalf of that tenant, at that tenant's request. The Personal Data being shared will be limited to the tenant's name, address and contact details (**Shared Personal Data**).
- 35.3 With respect to the parties' rights and obligations under this agreement, the parties acknowledge and agree that each party is a Controller in respect of the Shared Personal Data.
- 35.4 The Supplier shall:
  - 35.4.1 not Process the Shared Personal Data for any purpose unnecessary for or incompatible with the delivery of the Services;
  - 35.4.2 give full information to any Data Subject whose Personal Data may be Processed under this agreement of the nature of such Processing, in accordance with Articles 13 and 14 of the UK GDPR;
  - 35.4.3 ensure that all personnel are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) and have undergone adequate training in the use, care, protection and handling of Personal Data and how it applies to their particular duties;
  - 35.4.4 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful Processing of Shared Personal Data and against accidental loss or destruction of, or damage to, Shared Personal Data;

- 35.4.5 in the event of becoming aware of or suspecting a Personal Data Breach, complaint, claim or other matter likely to affect VHA, promptly (and in any event within 24 (twenty-four) hours) inform VHA of such issue, irrespective of whether there is a requirement to notify the Information Commissioner or Data Subjects;
- 35.4.6 ensure that once Shared Personal Data is no longer required for the purposes of the Services and relevant retention periods have expired, Shared Personal Data is securely and permanently deleted in accordance with the Supplier's retention and disposal policies or returned to VHA as appropriate; and
- 35.4.7 maintain complete and accurate records and information to demonstrate its compliance with this Clause 35.

## **36. Confidentiality**

- 36.1 Each party undertakes that it shall not at any time during this agreement, and for a period of two years after termination or expiry of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 36.2.
- 36.2 Each party may disclose the other party's confidential information:
  - 36.2.1 to its Representatives who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its Representatives to whom it discloses the other party's confidential information comply with this Clause 36; and
  - 36.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 36.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

## **TERMINATION**

### **37. Termination for breach**

- 37.1 VHA may terminate this agreement in whole or part with immediate effect by written notice to the Supplier in the following circumstances:
  - 37.1.1 the Supplier is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, VHA may only terminate this agreement under this clause 37.1.1 if the Supplier has failed to remedy such breach within 30 days of receipt of notice from VHA (a **Remediation Notice**) to do so;
  - 37.1.2 VHA serves two Remediation Notices in a rolling 12 month period or twenty Default Notices in a rolling six month period (regardless of whether the breach was rectified);

- 37.1.3 the Supplier repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- 37.1.4 the Supplier fails to meet three or more KPI Targets in a one month period;
- 37.1.5 a Service Improvement Plan cannot be agreed in accordance with clause 12.3;
- 37.1.6 the Supplier fails to implement or successfully complete a Service Improvement Plan by the required dates in accordance with clause 12.3;
- 37.1.7 the Supplier, whether in relation to the Services and this agreement or otherwise, commits any act or omission which in the reasonable opinion of the VHA Contract Manager has or may cause significant harm to the reputation of VHA;
- 37.1.8 there is an Insolvency Event;
- 37.1.9 there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010; or
- 37.1.10 VHA reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply.
- 37.2 VHA may terminate this agreement in accordance with the provisions of clause 40 and clause 41.
- 37.3 If this agreement is terminated by VHA pursuant to this clause 37, such termination shall be at no loss or cost to VHA and the Supplier hereby indemnifies VHA against any such losses or costs which VHA may suffer as a result of any such termination.
- 37.4 The Supplier may terminate this agreement by giving 14 days' written notice to VHA in the event that VHA fails to pay any undisputed sum due to the Supplier under this agreement within 90 days of the due date. The Supplier may only terminate this agreement under this clause if it has first given written notice to VHA (such notice to specify the sums due, include copies of the invoices relating to such sums and stating that the payment is over 90 days late and that failure to make payment may result in termination under this clause) and VHA has failed to make the payment within 14 days of such notice.

### **38. Termination on notice**

- 38.1 Without affecting any other right or remedy available to it, VHA may terminate this agreement at any time by giving not less than sixty (60) days' notice to the Supplier in writing specifying the date of termination.
- 38.2 The Supplier shall have no claim against VHA for any loss, damages, costs, expenses suffered or incurred or to be suffered or incurred by the Supplier as a result of VHA exercising its right of termination under clause 38.1 (including where VHA appoints a third party to carry out the Services or any element of them following such termination).

### 39. Consequences of termination or expiry

- 39.1 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry, shall remain in full force and effect.
- 39.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

## GENERAL PROVISIONS

### 40. Force majeure

- 40.1 Provided it has complied with the remaining provisions of this clause 40, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations.
- 40.2 The corresponding obligations of the other party will be suspended to the same extent as those of the Affected Party. In particular VHA's obligations to make payment to the Supplier shall be suspended for so long as it is not receiving the Services (or any part of them).
- 40.3 The Affected Party shall:
- 40.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but not later than 14 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- 40.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event.
- 40.4 An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event. The Supplier cannot claim relief if the Force Majeure Event is one which, in accordance with Best Industry Practice, the Supplier should have foreseen and provided for the cause in question.
- 40.5 The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

40.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than twelve weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving four weeks' notice to the Affected Party.

#### **41. Compliance with anti-slavery laws and policies**

41.1 In performing its obligations under the agreement, the Supplier shall:

41.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;

41.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and

41.1.3 include in its contracts with its Sub-Contractors, anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 41 and ensure that each of its subcontractors and suppliers shall comply with the Anti-slavery policy and with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

#### **42. Prevention of bribery**

42.1 The Supplier shall during the term of this agreement:

42.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010 (**Relevant Requirements**);

42.1.2 establish, maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements;

42.1.3 notify VHA (in writing) if it becomes aware of any breach of clause 42.1.1, or has reason to believe that it has received a request or demand for any undue financial or other advantage;

42.1.4 within two months of the date of this agreement, and annually thereafter, certify to VHA in writing signed by an officer of the Supplier, compliance with this clause 42 by the Supplier and all persons referred to in clause 42.2. The Supplier shall provide such supporting evidence of compliance as VHA may reasonably request.

42.2 The Supplier shall ensure that any of its agents, consultants, contractors, Sub-contractors or other persons engaged in performance of the Supplier's obligations under this agreement do so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause

("Relevant Terms"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to VHA for any breach by such persons of any of the Relevant Terms.

42.3 If the Supplier is in breach of this clause, VHA may immediately terminate this agreement.

#### **43. Waiver**

43.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

#### **44. Partnership or Agency**

44.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

44.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

#### **45. Third Party Rights**

45.1 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

#### **46. Publicity**

46.1 The Supplier must not make any press announcement or publicise the agreement or any part of it in any way, without VHA's prior written consent.

#### **47. Notices**

47.1 Any notice given to a party under or in connection with this agreement shall be in writing marked for the attention of the party's Contract Manager and shall be:

47.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

47.1.2 sent by email to the Contract Manager's email address (as in Schedule 2 or updated by the relevant party in accordance with Schedule 2).

47.2 Any notice shall be deemed to have been received:

- 47.2.1 if delivered by hand, at the time the notice is left at the proper address;
  - 47.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; or
  - 47.2.3 if sent by email, at the time of transmission, or if this time falls outside working hours in the place of receipt, when working hours resume. (In this clause, working hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt).
- 47.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**48. Severability & entire agreement**

48.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. The provisions incorporated into the agreement are the entire agreement between the parties. The agreement replaces all previous statements, or agreements whether written or oral. No other provisions apply.

**49. Counterparts**

49.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original of this agreement, but all the counterparts shall together constitute the one agreement.

**50. Governing law**

50.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**51. Jurisdiction**

51.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

**IN WITNESS** whereof the parties hereto have caused this agreement to be duly executed the day and year first before written

Signed by [NAME OF DIRECTOR] for and on behalf of	.....
---------------------------------------------------	-------



<b>VECTIS HOUSING ASSOCIATION LIMITED</b>	Director
Signed by <b>[NAME OF DIRECTOR]</b> for and on behalf of <b>[NAME OF SUPPLIER]</b>	..... Director

**SCHEDULE 1**  
**SPECIFICATION**

**SCHEDULE 2  
CONTRACT MANAGEMENT**

**Contract Managers**

VHA Contract Manager	Amanda Collopy  Amanda@vectishousing.co.uk
Supplier Contract Manager	Insert name and contact details including email

Where either party wishes to replace its Contract Manager it shall notify the other party in writing with the details of the replacement Contract Manager and date this takes effect.

**Schedule of Works and Management Reports**

The Supplier shall provide VHA with a schedule of works detailing the programme for the delivery of the Services throughout each year in the Term. The schedule of works must be approved by VHA in writing on or before the Commencement Date.

The Supplier shall provide VHA a monthly schedule of works (based on the agreed schedule of works for the year) detailing the programme for delivery of Services in the month ahead. The schedule of works must be provided no later than seven days prior to the start of each month.

The Supplier shall provide monthly Management Reports to VHA, within seven days of the end of each month each Management Report shall include:

- i. Details of the Services provided against the agreed schedule of works;
- ii. Confirmation that the Supplier has completed all Services to be provided under the schedule of works and of any exceptions (providing reasons and the proposal to rectify this);
- iii. measures to be taken to remedy any deficiency in Achieved KPIs identified in the previous month;
- iv. such other information as VHA may reasonably require in relation to the Services.

**Site Visits**

The Supplier and VHA shall carry out regular Site visits at the request of VHA to enable VHA to inspect the provision of the Services and the delivery of the programme detailed in the schedule of works and the Supplier's compliance with this Agreement.

Site visits will be attended by a representative of VHA and the Supplier (at supervisor or Contract Manager level, as requested by VHA).

**Management Meetings**

The Contract Managers shall meet monthly for the first six months of the Term and then move to quarterly (unless VHA requests that monthly meetings continue, in which case the meetings will move to quarterly when notified by VHA) to discuss the Management Reports and any other business reasonably required by VHA.

Meetings will be held at VHA’s office, with minutes to be taken and circulated.

**KPIs**

The KPIs which the Parties have agreed shall be used to measure the Supplier’s performance are contained in the following tables.

<b>KPI 1</b>	<b>Resident Satisfaction</b>
<b>Method</b>	Text messages are sent six monthly, on a rolling programme, requesting residents reply to the question, “are you satisfied with the ground’s maintenance service Yes or No?” If No they are then requested to give reasons.
<b>KPI Target</b>	Year 1 – the percentage of residents who respond “Yes” in response to the text message is 70% or higher of those sent the text message. The percentage will be calculated as an average for the year.  Subsequent years – the % target will be increased by 2% each year (i.e. for year two the target will be 72% and for year three 74%, etc.)
<b>Measurement Period</b>	Annual

<b>KPI 2</b>	<b>Complaints</b>
<b>Method</b>	Complaints received and investigated by VHA and upheld.
<b>KPI Target</b>	Two or less complaints received per month across all sites
<b>Measurement Period</b>	Monthly

<b>KPI 3</b>	<b>Additional works orders</b>
<b>Method</b>	Job completion dates sent through by contractor are logged onto VHA system. Each month a report is run of jobs completed in the month, for jobs completed within target. This will be as a %.
<b>KPI Target</b>	100% of additional works orders to be completed within 10 days (unless agreed in advance with VHA that a longer timescale applies)
<b>Measurement Period</b>	Monthly

VHA will monitor the Supplier's performance against each KPI Target and shall provide the Supplier with a monthly report detailing the Achieved KPIs.

## **SCHEDULE 3 CHARGES**

### **Annual Charge**

The annual Charge for the Services is [£x] exclusive of VAT.

The annual Charge shall be payable in twelve equal monthly instalments of [£x] monthly in arrears.

The annual Charges are payable in equal instalments regardless of the actual volume of Services provided in each month. No adjustment will be made to the Charges to reflect fluctuations in the volume of Services across the year.

### **Annual Charge Review**

The annual Charge may be reviewed by the Supplier annually with effect from 1 April in each year (**Annual Charge Review Date**). The first review shall take effect on 1 April 2026 (and the annual Charge shall therefore be fixed until 1 April 2026, with no review prior to this).

The Supplier shall review the annual Charge by applying a percentage increase or decrease to the annual Charge which reflects the increase or decrease in the Consumer Prices Index in the preceding 12 month period from December to December.

The first review which will take effect on 1 April 2026 shall therefore reflect the increase or decrease to the Consumer Prices Index for the 12 month period from December 2024 to December 2025. The second review which will take effect on 1 April 2027 shall therefore reflect the increase or decrease to the Consumer Prices Index for the 12 month period from December 2025 to December 2026, and so on.

The “Consumer Prices Index” means the Consumer Prices Index as published by the Office for National Statistics from time to time, or failing such publication, such other index as VHA determines most closely resembles such index.

The Supplier shall notify VHA in writing no later than the 31 January falling before the relevant Annual Charge Review Date of the annual Charge which it proposes to apply from the Annual Charge Review Date applying this calculation.

### **Charges for additional services**

VHA may request the Supplier to provide additional services (which do not form part of the Services covered by the annual Charges). Where this is the case it will request the Supplier to provide a quotation for these additional services.

The Supplier shall provide a quotation in writing within 10 days, detailing the additional services to be carried out, timescale for performance and the Charges which will be payable for the additional services.

VHA shall confirm in writing if it accepts the quotation and where it does so, these additional services will form part of the Services to be provided under this agreement (and shall be provided in accordance with the terms of this agreement).

The Supplier will include the Charges for these additional services (which may not exceed the quoted amount without prior written approval from VHA) within the invoice submitted at the end of the month in which such additional services were provided and completed.

**Expenses & costs**

The Charges are the entire price payable by VHA to the Supplier in respect of the Services and includes all materials and consumables used by the Supplier, travel costs, the cost of Supplier Personnel and all other costs and expenses incurred by the Supplier in meeting its obligations under this Agreement and no additional sums shall be payable by VHA.

**SCHEDULE 4**  
**SUPPLIER'S TENDER**



## **SCHEDULE 5 TUPE**

### **1. TUPE on Commencement of the Agreement**

- 1.1. The Parties agree and acknowledge that TUPE will operate to transfer the employment of any Employees. The Supplier shall comply in all respects with its obligations under TUPE.

### **2. TUPE on Termination or Expiry of the Agreement**

- 2.1. The Supplier undertakes to VHA that, during the six months prior to the expiry of the agreement or on notice of the termination (or partial termination) or variation of the agreement having been given, the Supplier shall not without the prior consent of VHA (such consent not to be unreasonably withheld or delayed):
- 2.1.1. amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including for the avoidance of doubt, pay or hours) of any Supplier Personnel (other than where such amendment or variation has previously been agreed between the Supplier and the Supplier Personnel in the normal course of business, and where any such amendment or variation is or are not in any way related to the transfer of the Services and is or are made in good faith);
- 2.1.2. replace (unless the individual has resigned or been fairly dismissed and the replacement is so far as possible employed on materially the same terms and conditions as the employee being replaced) or terminate or give notice to terminate the employment or engagement of any Supplier Personnel (other than in circumstances in which the termination is for reasons of genuine misconduct or lack of capability);
- 2.1.3. transfer away, deploy, remove, reduce or vary the involvement of any of the Supplier Personnel from or in the provision of the Services (other than where this: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse impact upon the delivery of the Services by the Supplier (and provided that any such transfer, deployment, removal, reduction or variation is not in any way related to the transfer of the Services));
- 2.1.4. take any steps to oblige VHA or any Replacement Supplier to do any of the matters referred to above; or
- 2.1.5. recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period set out in clause 2.1.
- 2.2. At any time during the term of the agreement, or upon the date which is six months prior to expiry of agreement or upon notice of early termination (or partial termination) or variation of this agreement having been given, the Supplier shall, within 21 days of a written request from VHA, provide and thereafter keep updated, in a fully indexed and catalogued format, all the employee information which VHA reasonably considers necessary to enable VHA to appoint a new provider of services substantially similar to the Services or any part thereof including where this enables VHA to issue invitations to tender/offer for the future

provision of the Services or any part thereof, including but not limited to all employee liability information identified in Regulation 11 of TUPE.

- 2.3. Where, in the opinion of VHA, TUPE is likely to apply on the expiration, termination (or partial termination) or variation of the agreement, the information to be provided by the Supplier under clause 2.2 shall include, without limitation and as applicable, accurate information relating to the employees under Regulation 11 of TUPE and the number of employees who would be transferred.
- 2.4. VHA shall take all necessary precautions to ensure that the information referred to in clause 2.2 and 2.3 is given only to prospective tenderers who have qualified to tender/offer for the future provision of services substantially similar to the Services.
- 2.5. The information referred to in clauses 2.2 and 2.3 shall be provided in such form as shall be requested by VHA in writing and the Supplier hereby agrees that all such information may be passed on to prospective tenderers (in confidence) during any retender exercise.
- 2.6. The Supplier warrants that the information that it is required to provide to VHA under clauses 2.2 and 2.3 is accurate and complete and shall indemnify VHA against any claim made against VHA at any time by any person in respect of any liability incurred by VHA arising from any deficiency or inaccuracy in information which the Supplier is required to provide under clauses 2.2 and 2.3.
- 2.7. The Supplier agrees to use its reasonable endeavours to obtain where required appropriate consents from the relevant Supplier Personnel in accordance with the data protection laws when disclosing employee information as referred to and for the purposes set out in this Schedule.
- 2.8. The Parties acknowledge that TUPE may apply upon the Supplier ceasing to provide the Services or part of the Services. Where TUPE applies in such circumstances, the Supplier shall comply with its obligations under TUPE and shall indemnify VHA and keep VHA indemnified against all Losses arising from the Supplier's defective performance of its obligations under TUPE.
- 2.9. The Supplier shall indemnify and keep indemnified in full VHA without any limitation in time against all Losses incurred by VHA arising out of or in connection with or in respect of the employment or termination of employment or engagement of any person by the Supplier in connection with the Services, prior to the date of expiry or termination (or partial termination) or variation of the Agreement), including the Supplier's obligations under the Pensions Legislation and any claim by any third party arising out of, or in respect of, any act or omission of any employee or person as aforesaid.
- 2.10. The Supplier shall indemnify and keep indemnified in full VHA without any limitation in time against all Losses incurred by VHA after the date of expiry or termination (or partial termination) or variation of the Agreement arising out of or in connection with or in respect of the employment or termination of employment or engagement of any person by VHA where that person was not previously identified by the Supplier as in scope to TUPE

transfer in the information disclosed under clauses 2.2 or 2.3 above.

- 2.11. If on the expiry or earlier termination (or partial termination) or variation of this agreement, the contract of employment or engagement of any individual employed or engaged by the Supplier shall pass to a Replacement Supplier under TUPE, the Supplier shall on request by VHA provide to the Replacement Supplier a written and binding indemnity in respect of each and every such employee in the same terms as those provided for under clauses 2.8 to 2.10 above with the substitution of a reference to the Replacement Supplier for each reference to VHA.

### **3. Sub-Contracting**

- 3.1. Where the Supplier enters into a sub-contract for the provision of any Services by a sub-contractor, it shall impose on the relevant sub-contractor appointed, the same obligations as are on the Supplier (as are set out in this Schedule).

### **4. Definitions**

**Employee or Employees**

means the persons who are organised in respect of and assigned to the Services by the incumbent provider(s) or, as the case may be, by VHA, prior to the Commencement Date for the purposes of TUPE.

**Losses**

means all damages, losses, liabilities, claims, costs, expenses (including the costs of legal or professional services), proceedings, demands and charges whether arising under statute, contract or at common law.

**Pensions Legislation**

means, as may be amended from time to time, the Pensions Act 2004, The Transfer of Employment (Pension Protection) Regulations 2005, the Pensions Act 2008 and any other legislation, Government policy or guidance in relation to the pensions entitlements of the Supplier Personnel including, without limitation, the Employees who transfer under TUPE to the Supplier on the Commencement Date or on such other date as referred to in Clause 1.2.

**Replacement Supplier**

means any third party service provider appointed by VHA to supply any services which are substantially similar to any of the Services and which VHA receives in substitution for any of the Services following the expiry, termination or partial termination of the Agreement.