

SUPPLY OF SERVICES CONTRACT

CONTRACT DETAILS

DATE:

[Contract No.]	[CONTRACT NUMBER]
Authority:	The Council of the Borough of Middlesbrough
Authority's address:	PO Box 503, Town Hall, Middlesbrough, TS1 9FX
[Authority's representative:]	Name: [NAME] Title: [TITLE] Email: [EMAIL] Telephone: [NUMBER] Postal Address: [POSTAL ADDRESS]
Supplier:	[COMPANY NAME] LIMITED (No. [NUMBER])
Supplier's address:	[ADDRESS]
Supplier's VAT number:	[NUMBER]
[Supplier's representative:]	Name: [NAME] Title: [TITLE] Email: [EMAIL] Telephone: [NUMBER] Postal Address: [POSTAL ADDRESS]
Services Start Date:	[[DATE] OR The date the Contract is entered into by the parties.]
Services:	[DESCRIPTION], as further detailed in Schedule 1.
Key Deliverables:	[DESCRIPTION], as further detailed in Schedule 1.
Charges:	[[SUMS], as further detailed in Schedule 2
[Special terms:]	[In the Conditions: [(a) Clause [NUMBER] deleted: The entire text of clause

	<p>[NUMBER] is deleted and replaced with the words “Not used”.]</p> <p>[(b) Clause [NUMBER] added: This clause is inserted into the Conditions: [NEW CLAUSE].]</p> <p>[(c) Clause [NUMBER] amended: This clause is amended to read as follows: [AMENDED CLAUSE IN FULL].]</p>
Schedules:	<p>Schedule 1: Services.</p> <p>Schedule 2: Charges.</p> <p>Schedule 3: Mandatory Policies.</p> <p>[DETAILS OF ADDITIONAL SCHEDULES]</p>

1. This Contract is made up of the following:

- (a) The Contract Details.
- (b) The Conditions.
- (c) The Mandatory Policies.
- (d) The Schedules specified in the Contract Details.

2. If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

This Contract has been entered into on the date stated at the beginning of it.

Signed by

for and on behalf of THE COUNCIL OF THE Authorised Signatory
BOROUGH OF MIDDLESBROUGH

Signed by [NAME OF DIRECTOR]

for and on behalf of [NAME OF SUPPLIER] Director

AGREED TERMS

1. INTERPRETATION

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: the charges payable by the Authority for the supply of the Services by the Supplier, as set out in the Contract Details [and Schedule 2].

Conditions: these terms and conditions set out in clause 1 to clause **Error! Reference source not found.** (inclusive).

Contract: the contract between the Authority and the Supplier for the supply of the Services in accordance with the Contract Details[, the Mandatory Policies], these Conditions and any Schedules.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

Authority Materials: all materials, equipment and tools, drawings, specifications and data supplied by the Authority to the Supplier.

Deliverables: all documents, products and materials developed by the Supplier or its agents, subcontractors and personnel as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts), and the Key Deliverables set out in the Contract Details.

Group: in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

Initial Term: a term of [NUMBER] years from the Services Start Date.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

[Mandatory Policies: the Authority's mandatory policies and codes for contracts set out in Schedule 3, as amended by notification to the Supplier from time to time.]

Services: the services, including without limitation any Deliverables, to be provided by the Supplier pursuant to this Contract, as described in Schedule 1.

Services Start Date: the day on which the Supplier is to start provision of the Services, as set out in the Contract Details.

Supplier IPRs: all Intellectual Property Rights either subsisting in the Deliverables (excluding any Authority Materials incorporated in them) or otherwise necessary or desirable to enable a Authority to receive and use the Services.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to **writing** or **written** does not include fax or email.

2. COMMENCEMENT AND TERM

- 2.1 This Contract shall commence on the Services Start Date and shall end, unless terminated earlier, at the end of the Initial Term.
- 2.2 [The Authority may extend this agreement beyond the Initial Term by [EXTENSION PROVISIONS]. If the Authority wish to extend this agreement it shall give the Supplier 3 months' written notice before the expiry of the Contract.]

3. SUPPLY OF SERVICES

- 3.1 The Supplier shall supply the Services to the Authority from the Services Start Date in accordance with this Contract.
- 3.2 In performing the Services the Supplier shall meet, and time is of the essence as to, any performance dates specified in Schedule 1.
- 3.3 In supplying the Services, the Supplier shall:
 - (a) perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - (b) co-operate with the Authority in all matters relating to the Services, and comply with all instructions of the Authority;
 - (c) appoint or, at the written request of the Authority, replace without delay a manager, who shall have authority to contractually bind the Supplier on all matters relating to the Services.;

- (d) only use personnel who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;
- (e) ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in this Contract;
- (f) ensure that the Services and Deliverables will conform in all respects with the service description set out in Schedule 1 and that the Deliverables shall be fit for any purpose expressly or implicitly made known to the Supplier by the Authority;
- (g) provide all equipment, tools, vehicles and other items required to provide the Services;
- (h) ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
- (i) comply with:
 - (i) all applicable laws, statutes, regulations and codes from time to time in force; and
 - (ii) the Mandatory Policies.
- (j) observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Authority's premises from time to time and are notified to the Supplier;
- (k) hold all Authority Materials in safe custody at its own risk, maintain the Authority Materials in good condition until returned to the Authority, and not dispose of or use the Authority Materials other than in accordance with the Authority's written instructions or authorisation;
- (l) not do or omit to do anything which may cause the Authority to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business; and
- (m) notify the Authority in writing immediately upon the occurrence of a change of control of the Supplier.

4. AUTHORITY'S OBLIGATIONS

4.1 The Authority shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide such access to the Authority's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the Authority in writing in advance, for the purposes of the Services; and

- (c) provide such information as the Supplier may reasonably request and the Authority considers necessary, in order to carry out the Services in a timely manner.
- 4.2 If the Supplier considers that the Authority is not, or may not, be complying with any of the Authority's obligations, it shall only be entitled to rely on this as relieving the Supplier's performance under the Contract if the Supplier, promptly after the actual or potential non-compliance has come to its attention, has notified details of it to the Authority in writing.

5. TITLE TO DELIVERABLES AND AUTHORITY MATERIALS

- 5.1 Title to any Deliverables that are goods or in any physical media on which Deliverables are stored shall pass to the Authority on the earlier of their delivery to the Authority or payment of the Charges for them. The Supplier transfers the Deliverables to the Authority free from all liens, charges and encumbrances.
- 5.2 All Authority Materials are the exclusive property of the Authority.

6. INTELLECTUAL PROPERTY

- 6.1 The Supplier and its licensors shall retain ownership of all Supplier IPRs. The Authority and its licensors shall retain ownership of all Intellectual Property Rights in the Authority Materials.
- 6.2 The Supplier grants the Authority, or shall procure the direct grant to the Authority of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy and modify the Supplier IPRs for the purpose of receiving and using the Services during the term of the Contract and for the duration of any exit assistance services provided under clause 11(b).
- 6.3 The Authority grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Authority Materials for the term of this Contract for the purpose of providing the Services to the Authority in accordance with this Contract.
- 6.4 The Supplier shall keep the Authority indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Authority as a result of or in connection with any claim brought against the Authority for actual or alleged infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt, use or onward supply of the Services by the Authority and its licensees and sub-licensees. This clause 6.4 shall survive termination of the Contract.

7. CHARGES AND PAYMENT

- 7.1 In consideration for the provision of the Services, the Authority shall pay the Supplier the Charges in accordance with this clause 7.
- 7.2 All amounts payable by the Authority exclude amounts in respect of VAT which the Authority shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.
- 7.3 The Supplier shall submit invoices for the Charges plus VAT if applicable to the Authority [monthly in arrear, on or after the [NUMBER] day of each month **OR** at the intervals specified in Schedule 2]. Each invoice shall include all reasonable supporting information required by the Authority.
- 7.4 The Authority shall pay each invoice which is properly due and submitted to it by the Supplier, within 30 days of receipt, to a bank account nominated in writing by the Supplier.
- 7.5 If the Authority fails to make any payment due to the Supplier under this Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 10, the Authority shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Authority shall pay the interest together with the overdue amount.
- 7.6 In relation to payments disputed in good faith, interest under clause 7.5 is payable only after the dispute is resolved, on sums found or agreed to be due, from 1 day after the dispute is resolved until payment.
- 7.7 The Authority may at any time, without notice to the Supplier, set off any liability of the Supplier to the Authority against any liability of the Authority to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Contract. If the liabilities to be set off are expressed in different currencies, the Authority may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Authority of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Contract or otherwise.

8. LIMITATION OF LIABILITY

- 8.1 Nothing in this Contract:
- (a) shall limit or exclude the Supplier's or the Authority's liability for:

- (i) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
 - (ii) fraud or fraudulent misrepresentation;
 - (iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - (iv) any other liability which cannot be limited or excluded by applicable law; or
- (b) shall limit or exclude the Supplier's liability under clause 6.4 of these Conditions.

8.2 Subject to clause 8.1 of these Conditions:

- (a) neither party to this Contract shall have any liability 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 Contract; and
- (b) the Authority's total liability to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Contract shall be limited to [£[FIGURE] **OR** the greater of £[MINIMUM FIGURE] and [NUMBER IN WORDS] per cent ([NUMBER IN FIGURES]%) of the total charges paid by the Authority under this Contract].

8.3 Notwithstanding the provisions of clause 8.2(a), the losses for which the Supplier assumes responsibility and which shall (subject to clause **Error! Reference source not found.** and clause 8.2(b)) be recoverable by the Authority include:

- (a) sums paid by the Authority to the Supplier pursuant to this Contract, in respect of any services not provided in accordance with the terms of this Contract;
- (b) wasted expenditure;
- (c) 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;
- (d) losses incurred by the Authority arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any subcontractor, Supplier personnel, regulator or Authority of the Authority) against the Authority caused by the act or omission of the Supplier; and
- (e) anticipated savings;

- 8.4 The rights of the Authority under this Contract are in addition to, and not exclusive of, any rights or remedies provided by common law.

9. INSURANCE

During the term of this Contract, the Seller shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with this Contract, and shall produce to the Buyer on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

10. TERMINATION

- 10.1 Without affecting any other right or remedy available to it, the Authority may terminate this Contract with immediate effect by giving written notice to the Supplier if:
- (a) there is a change of Control of the Supplier;
 - (b) the Supplier's financial position deteriorates to such an extent that in the Authority's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (c) the Supplier commits a breach of clause 3.3(i).
- 10.2 Without affecting any other right or remedy available to it, the Authority may terminate this Contract at will by giving three months' written notice to the Supplier.
- 10.3 Without affecting any other right or remedy available to it, either party may terminate this Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

- 10.4 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.
- 10.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

11. EXIT ARRANGEMENTS

On termination of this Contract for whatever reason:

- (a) the Supplier shall immediately deliver to the Authority all Deliverables whether or not then complete, and return all Authority Materials. If the Supplier fails to do so, then the Authority may enter the Supplier's premises and take possession of them. Until they have been delivered or returned, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract; and
- (b) the Supplier shall, if so requested by the Authority, provide all assistance reasonably required by the Authority to facilitate the smooth transition of the Services to the Authority or any replacement supplier appointed by it.

12. FORCE MAJEURE.

- 12.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 2 weeks, the party not affected may terminate this Contract by giving 5 days' written notice to the affected party.

13. SUBCONTRACTING.

The Supplier may not subcontract any or all of its rights or obligations under this Contract without the prior written consent of the Authority. If the Authority consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its subcontractors as if they were its own.

14. CONFIDENTIALITY.

- 14.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.2.
- 14.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under this Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under this Contract.

15. ENTIRE AGREEMENT.

15.1 This Contract 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.

16. VARIATION.

16.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. WAIVER.

17.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.

18. SEVERANCE.

If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

19. NOTICES.

- 19.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service or commercial courier.
- 19.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 19.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 19.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

20. THIRD PARTY RIGHTS.

No one other than a party to this agreement shall have any right to enforce any of its terms.

21. GOVERNING LAW.

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

22. JURISDICTION.

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

Schedule 1 Services

[INSERT DETAILS OF THE SERVICES]

Schedule 2 Charges

1. CHARGES FOR THE SERVICES

[DETAILS OF THE CHARGES].

2. INVOICING ARRANGEMENTS

[DETAILS OF WHEN INVOICES ARE TO BE RAISED FOR THE SERVICES].

Schedule 3 Mandatory Policies

[LIST [AND INSERT] THE MANDATORY POLICIES].

The Mandatory Policies are:

- [Modern Slavery and Human Trafficking].
- [Corporate and Social Responsibility Policy].
- [Anti-bribery and Anti-corruption Policy].
- [Ethics Policy].
- [Data and Privacy Policy].