

SOLUTIONS SK CONTRACTUAL ARRANGEMENTS

Report of the Corporate Director for Place Management & Regeneration

1. PURPOSE OF REPORT

- 1.1 To seek the Executive's approval to confirm the Council's ongoing commitment to Solutions SK Ltd (SSK)
- 1.2 Seek approval from the Executive to maximise commissioned work with SSK.
- 1.3 Agreement from the Executive to enter into revised contractual arrangements for a 7 year period, commencing 1st April 2017 with an option to extend for a further period of 3 years.

2. BACKGROUND

- 2.1 Currently Public Realm and Property frontline operational services are provided by SSK the Council's wholly owned company.
- 2.2 The Council's total annual expenditure with SSK exceeds £21m
- 2.1 A report to the Council's Executive on 17th March 2015 agreed a Council and SSK jointly commissioned review to formulate the scope of any extension beyond 31st March 2017
- 2.3 Previous agreements have been independently formed at a Directorate level. It is intended that the revised contractual arrangements are comprehensive and cover all the Council's interactions with SSK across all directorates.
- 2.4 The Council's existing contractual arrangements with SSK expire on 31st March 2017.

3. OVERARCHING PRINCIPLES

- 3.1 It is the Council's intention to maximise the volume of work commissioned via SSK hence for the duration of this agreement, SSK shall have the sole and exclusive right to perform the following **Exclusive** services.
 - a/ Refuse and Recycling
 - b/ Street care
 - c/ Parks and Greenspace
 - d/ Highways Reactive
 - e/ Winter Maintenance
- 3.2 Non-exclusive services (which includes Highways Capital/Planned work) will be offered to SSK on a **First Refusal** basis providing a series of conditions are

met, namely compliance with the service standards, performance indicators & targets specified and a schedule of rates has been agreed with the Council.

- 3.3 For **Other Services**, (including Building Cleaning, Security & CCTV) the Council's intention is to maximise services delivered by SSK. Alternative supply chain may be engaged where SSK do not have the capacity or capability to deliver.
- 3.4 Payments – The volume of individual financial transactions will be reduced to limit the administrative burden on both organisations whilst maintaining transparency. This will aid both the council and SSK in terms of administrative efficiency.
- 3.5 SSK will be encouraged to grow their third party (non-Council) revenues.
- 3.6 It is intended that as SSK grow via the maximisation of work from the council and third party work their efficiency should increase and as a consequence increase Value for Money for the council as their main customer.
- 3.7 In order to optimise the benefits of delivering through a Teckal company such as SSK it is recognised that commissioning arrangements, working practices and overall relationships between the council and SSK will continue to develop positively using the principles of this agreement. For example the ongoing work on a joint review of Highways Reactive maintenance has led to a single delivery model of “Stockport Highways” as an essential part of its approach. Two organisation working efficiently together as one for the benefit of Stockport.

4. PERFORMANCE MEASURES

- 4.1 The performance of SSK work will be closely monitored & reported to E&E Scrutiny committee on a quarterly basis. The reported Performance Indicators (PI's) will be amended during the course of the contract as priorities change– The initial set of PI's is shown in Annex C. Baseline data will be gathered and reported in Year 1 for newly devised PI's

5. SERVICE OPERATING SPECIFICATIONS

- 5.1 All SSK work will be detailed in a Service Operating Specification(s), which will be annexed to the Overarching Agreement. The overarching agreement is in Annex A. A list of Service Operating Specifications is in Annex B

6. LEGAL ISSUES

- 6.1 SSK are a wholly owned Stockport Council Teckal company. A Teckal company has the advantage of enabling the Council to commission services without the need for lengthy and costly procurement processes. To remain a Teckal company, no more than 20% of SSK's revenue may derive from external sources.

- 6.2 The overarching agreement has been jointly developed between the Council & SSK with DWF commissioned as Legal advisors.
- 6.3 The overarching agreement will also need to be approved by SSK's contributors committee before it is signed and sealed.

7. SOCIAL VALUES

- 7.1 It is recognised that SSK provide social value in the work they carry out for the council.
- 97% of the workforce are employed on PAYE terms.
 - 87% of the workforce live in SK postcodes.
 - Council payments to SSK stays within Stockport; it is spent over and over within the Stockport economy.
 - SSK embrace the employment of Stockport operatives in increasing numbers.
 - SSK embrace the Council's values.
 - SSK should be dealt with as a preferred contractor. The advantage of our Teckal relationship should be even more exploited to the full.
 - The social efficiency of the relationship should be optimised.

8. FINANCE

- 8.1 The council and SSK are seeking to achieve three distinct deliverables from the agreement:
- (i) A sustainable workflow generating a reasonable profit that enables funds to aid the growth of the company.
 - (ii) Strong predictable cashflows to aid the successful operation of SSK that helps to pay down the legacy debt held on the Statement of Financial Position (the balance sheet).
- And
- (iii) To maximise Value for Money for the council and increase SSK's commerciality.
- 8.2 The agreement states that the council will aim to maximise work to SSK in order for them to grow, with an emphasis on Highways Capital work. This should have the effect of increasing SSK profits, enabling them to improve their balance sheet position and also providing revenue savings to the council through the distribution of overheads.

- 8.3 As the council's Teckal company, it is recognised that reasonable profit aids the growth of the company. SSK seeks to deliver on its core values that are both parallel and closely aligned to the Council's own values.
- 8.4 The impact of austerity has changed the balance between the level of cashflow that can be generated by SSK compared to the debt repayments it must make (which is in addition to the normal cashflows of paying staff, suppliers, HMRC etc).
- 8.5 The method of costing and payments to SSK will change i.e. a move away from cost+ in the capital areas to schedule of rates. This should ensure that Value for Money can be assessed through comparison to contractors in the Alliance Contract (currently used for Highways Capital works). Council and SSK colleagues should work closely to ensure that efficiencies are made wherever possible also ensuring that the quality of work is of the required standard. The agreement states that "Both parties shall work in a transparent manner in relation to the annual budget process to drive efficiencies and maximise savings in relation to the provision of the Services".
- 8.6 For revenue works the approach to costing and payments will remain the same.
- 8.7 Council and SSK colleagues will work together to ensure cash-flow between the companies is as smooth and efficient as possible.

9. RECOMMENDATIONS TO THE ENVIRONMENT AND ECONOMY SCRUTINY COMMITTEE

- 9.1 The Environment and Economy Scrutiny Committee is invited to comment on the report.

10. RECOMMENDATIONS TO THE EXECUTIVE MEETING

- 10.1 Agree the principles outlined in this report.
- 10.2 Approve the intention to extend the council commissioning of services, as outlined, via SSK for the next 7 years with an option to extend by a further 3 years.
- 10.3 Delegate to the Chief Executive, in consultation with the Executive Councillor (Communities and Housing), the authority to approve the finalised Overarching Agreement, including any amendment that may arise from the Contributors Committee.
- 10.4 delegate to the Corporate Director for Place Management and Regeneration, in consultation with the Executive Councillor (Communities and Housing), and following consultation with the appropriate scrutiny committee, the authority to approve the individual service operating contracts as listed in Annex B.

BACKGROUND PAPERS

Executive report of 17th March 2015

Anyone wishing to inspect the above background papers or requiring further information should contact Ian O'Donnell on Tel: 0161-474-4175 or by email on ian.odonnell@stockport.gov.uk

ANNEX A

DRAFT – SUBJECT TO CONTRACT



2017

- (1) STOCKPORT METROPOLITAN BOROUGH COUNCIL
- and
- (2) SOLUTIONS SK LIMITED

DRAFT AGREEMENT FOR THE PROVISION OF SERVICES
[AMENDED VERSION FOLLOWING MEETING OF 13.12.2016]

DWF LLP
1 Scott Place
2 Hardman Street
Manchester M3 3AA

CONTENTS

1. Definitions and interpretation	2
2. Commencement and duration	6
3. SSK's obligations	7
4. Personnel	8
5. Exclusivity	8
6. Council's obligations	9
7. Joint Liaison Board, monitoring, reporting and value for money benchmarking	9
8. Access and security	11
9. Remedies	11
10. Annual Budget Process	12
11. Charges	13
12. Change Control Procedure	14
13. Intellectual Property Rights	14
14. Indemnities	15
15. Liability	16
16. Insurance	16
17. Right to audit	17
18. Assignment and Sub-contracting	17
19. Confidentiality	18
20. Freedom of information	18
21. Publicity	19
22. Data protection	19
23. Ethics	21
24. Termination	22
25. Consequences of termination	23
26. Handover	23
27. Force majeure	25
28. Dispute resolution	26
29. Waiver	27
30. Notices	27
31. Entire agreement	27
32. Conflict	28
33. Severance	28
34. Third party rights	28
35. Governing law	28
36. Jurisdiction	28
SCHEDULE 1	29
Special Conditions	29
SCHEDULE 2	30
Service Operating Specifications	30
SCHEDULE 3	32
Part 1 Change Control Procedure	32
Part 2 Change Control Notice	35

SIGNATURE PAGE	37
APPENDIX 1	38
The Council's Policies and Documents	38

THIS AGREEMENT is dated

2016

BETWEEN

SOLUTIONS SK LIMITED, a company incorporated and registered in England and Wales with company number 05844684 whose registered office is at Enterprise House, Oakhurst Drive, Off Bird Hall Lane, Cheadle Heath, Stockport, Cheshire, SK3 0XT (the "**SSK**");

STOCKPORT METROPOLITAN BOROUGH COUNCIL, of Town Hall, Edward Street, Stockport, SK1 3XE (the "**Council**");

BACKGROUND

SSK is a company which is wholly-owned by the Council. Pursuant to Regulation 12 of the PCR 2015, the Council may commission services directly from SSK without being required to undertake individual procurement exercises.

The Council has received services comparable to those covered by this agreement pursuant to a separate agreement between the Council and SSK dated 1 November 2006, which expires on 31 March 2017 (the "**2006 Agreement**").

The Council and SSK intend to enter into this agreement to structure the provision of the Services for an initial period of seven years from the Commencement Date, with an option for the Council to extend the term of the agreement for a further three years.

The main body of this agreement contains general, overarching terms which apply to the relationship between the Council and SSK in the provision of the Services. The agreement does not purport to include any terms concerning:

- a. the governance of SSK by the Council; or
- b. the purchase of support services from the Council by SSK.

The Services provided by SSK are detailed at Schedule 2 (Service Operating Specifications) and are grouped into three separate parts:

- c. Part 1 - Highways, Street Lighting and Signage;
- d. Part 2 - Public Realm; and
- e. Part 3 - Property Services.

Under each of these three parts are various service categories. The particulars of each service category, including the different services being delivered by SSK and the applicable rates and fees, are detailed in the Service Operative Specifications at Schedule 2.

Schedule 1 (Special Conditions) contains service-specific provisions which relate to the services set out in Parts 1, 2 and 3 of Schedule 2 (Service Operating Specifications).

TERMS AGREED

1. Definitions and interpretation

1.1 In this agreement the following terms have the following meanings:

"ADR notice"	has the meaning given in clause Error! Reference source not found. (Dispute resolution);
"Affected Party"	has the meaning given in clause 27 (Force majeure);
"Applicable Law"	in England, any and all applicable laws, regulations and industry standards or guidance (including any applicable British Standard) and any applicable and binding judgment of a relevant court of law;
"Business Day"	a day other than a Saturday, Sunday or public holiday in England;
"Change"	any change, amendment or variation to this agreement;
"Change Control Procedure"	the change control procedure set out in schedule Error! Reference source not found. (Change control);
"Charges"	the charges for the Services payable in accordance with clause Error! Reference source not found. (Charges);
"Commencement Date"	1 April 2017;
"Confidential Information"	has the meaning given in clause Error! Reference source not found. (Confidentiality);
"Council IT Systems"	the IT systems used by the Council from time to time;
"Council Materials"	all materials, equipment and tools, drawings, specifications and data supplied or made available by the Council to SSK;
"Council Policies"	the Council's policies (if any) in force from time to time, copies of the current versions of which, as at the date of this agreement, are attached at Appendix 1, or referred to in a Service Operating Specification;
"Council Premises"	the premises from which the Council operates from time to time;
"Council's Representatives"	the individuals appointed by the Council from time to time in accordance with clause Error! Reference source not found. (Joint Liaison Board and reporting) who shall serve as SSK's primary contacts for the Council's activities under this agreement;

"Council's Manager"	Project	the Council's Representative appointed as Project Manager in accordance with clause Error! Reference source not found. (Joint Liaison Board and reporting);
"Dispute"		has the meaning given in clause Error! Reference source not found. (Dispute resolution);
"Dispute Notice"		has the meaning given in clause Error! Reference source not found. (Dispute resolution);
"Force Majeure Event"		any event beyond the reasonable control of a party which that party is unable reasonably to prevent or avoid;
"Good Practice"	Industry	the use of standards, practices, methods and procedures conforming to Applicable Law and the exercise of that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the provision of similar services to an entity of a similar size and nature as the Council under the same or similar circumstances; and the use of standards, practices, methods and procedures conforming to Applicable Law and the exercise of that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the commissioning of similar services from a contracted entity of a similar size to SSK under the same or similar circumstances;
"Intellectual Rights"	Property	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights;
"Joint Liaison Board"		the body which constitutes representatives from the Council and SSK as detailed in clause 7 (Joint Liaison Board and monitoring);

“LGPS Employee”	an employee who is a member of the Local Government Pension Scheme;
"PCR 2015"	the Public Contracts Regulations 2015;
“Relevant Employees”	all those employees subject to a Relevant Transfer on a Relevant Transfer Date;
“Relevant Provider”	any third party appointed by the Council from time to time to provide any services which are substantially similar to any of the Services, or received in substitution for any of the Services, following the expiry, termination or partial termination of this agreement whether those services are provided by the Council internally and/or by any third party;
“Relevant Transfer”	a transfer to which TUPE applies;
“Relevant Transfer Date”	a date on which the provision of the Services changes;
"Services"	the services specified the Service Operating Specifications at schedule 2;
“Social Value”	a process whereby organisations meet their needs in a way which achieves value for money on a whole like basis in terms of generating benefits not only to the organisation but also to society and the economy, whilst minimising damage to the environment and which meets the Council’s Social Value Objectives which are contained in Appendix 1 (Council’s Policies and Documents);
"SSK Personnel"	the personnel engaged by SSK in the provision of the Services;
"SSK’s Project Manager"	SSK’s Representative appointed as Project Manager in accordance with clause Error! Reference source not found. (Joint Liaison Board and monitoring);
"SSK’s Representatives"	the individuals appointed by SSK from time to time who shall serve as the Council’s primary contacts for the Council’s activities under this agreement;
“TUPE”	the Transfer of Undertakings (Protection of Employment) Regulations 2006;

“TUPE Information”

means all information in respect of the employees assigned to the provision of the Services under this agreement whether employed by SSK or otherwise which the Council and/or a prospective tenderer and/or a Replacement Provider may reasonably require including but not limited to:

- (a) salaries, bonuses, overtime pay, holiday pay, sick pay and other benefits;
- (b) dates of birth;
- (c) details of continuous service;
- (d) hours of work;
- (e) individual terms and conditions of employment;
- (f) details of collective arrangements or other arrangements or understandings with any trade union, staff body or other representative body of such employees;
- (g) grievance records;
- (h) disciplinary and performance management records;
- (i) details of on-going disciplinary or grievance matters;
- (j) policies or other agreements or arrangements or understandings in respect of each of them and any variations agreed thereto;
- (k) absence records;
- (l) details of any enhanced or contractual redundancy entitlements; and
- (m) any other materially relevant information (including details of the hardware, software and other equipment required to perform) relating to the provision of the Services;

"VAT"

value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax; and

"Year" a period of 12 months from and including the Commencement Date or an anniversary of the Commencement Date provided that, where this agreement is terminated part way through such a 12 month period, a reference to a Year shall include the period from the end of the last Year completed until the date of termination.

1.2 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. Clause, schedule and paragraph headings shall not affect the interpretation of this agreement. The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to **"this agreement"** includes the schedules.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a **"company"** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.5 A reference to a statute or statutory provision or to Applicable Law:

1.5.1 shall include all subordinate legislation made from time to time under the same; and

1.5.2 is a reference to the same as amended, extended, superseded or consolidated from time to time.

1.6 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.7 Any words following the terms **"including"**, **"include"**, **"in particular"**, **"for example"** or any similar expression shall be construed as illustrative and shall not limit the generality of the related general words.

2. **Commencement and duration**

2.1 SSK shall provide the Services to the Council on the terms and conditions of this agreement and in accordance with the Service Operating Specifications in Schedule 2.

2.2 SSK shall provide the Services to the Council from the Commencement Date until 31 March 2024, unless this agreement is terminated in accordance with clause 24 (Termination).

2.3 The Council may, at its absolute discretion, extend the term of the agreement by a subsequent three year period to 31 March 2027.

- 2.4 If the Council exercises its right to extend the agreement, SSK shall provide the Services to the Council for the duration of the extension of the agreement.
- 2.5 The Council shall give SSK 12 months' notice of its intention to extend the agreement prior to the extension.

3. **SSK's obligations**

SSK agrees that it shall, in providing the Services:

- 3.1 co-operate with the Council in all matters relating to the Services and comply with all the Council's reasonable instructions;
- 3.2 perform the Services with reasonable care, skill and diligence in accordance with Good Industry Practice and all Applicable Law;
- 3.3 perform the Services in accordance with the relevant Service Operating Specifications contained at Schedule 2;
- 3.4 ensure that SSK Personnel are suitably skilled, experienced and qualified to perform tasks assigned to them, to ensure that SSK performs its obligations in accordance with this agreement;
- 3.5 ensure that SSK Personnel which may have contact with either children or vulnerable adults are suitably trained in relation to the Council's safeguarding guidelines (as amended from time-to-time) which will be made available to SSK on request;
- 3.6 observe and procure that SSK Personnel observe all health and safety rules and regulations, safeguarding guidelines and any other security requirements that apply at any of the Council Premises; and
- 3.7 keep and maintain all Council Materials in safe custody at its own risk, maintain the Council Materials in good condition until returned to the Council and not dispose of or use the Council Materials other than in accordance with the Council's written instructions or authorisation.

Health and safety

- 3.8 In providing the Services, SSK shall comply with all Applicable Law regarding health and safety compliance and shall notify the Council as soon as practicable of any health and safety incidents or material health and safety hazards of which SSK becomes aware and which relate or arise in connection with the performance of the Services.

Business continuity plan

- 3.9 SSK shall produce and maintain a business continuity plan which describes the processes and procedures which SSK will implement to deal with events which make the continuance of normal business very difficult.

- 3.10 SSK shall ensure that the processes and procedures in the business continuity plan are sufficient to minimise the adverse impact of the event so that business-critical functions can be maintained or quickly resumed.
- 3.11 SSK shall, on the Council's request, share the business continuity plan with the Council.
- 3.12 SSK shall test the suitability of the business continuity plan annually and, following such annual tests, incorporate any amendments or improvements into the business continuity plan to improve its robustness.

4. **Personnel**

- 4.1 In the event that the Council notifies SSK that SSK Personnel or any sub-contractors of SSK have breached clause 3.6, SSK shall use all reasonable endeavours to provide replacement personnel as soon as possible. If SSK fails to provide a replacement acceptable to the Council (acting reasonably) within 10 Business Days of the Council's notice, the Council shall be entitled to terminate this agreement with immediate effect.
- 4.2 In the event that any member of SSK Personnel is permanently or temporarily substituted, SSK shall ensure that any replacement is of equivalent qualification and experience to the member of Supplier Personnel he or she replaces and any work (including training, consultation and reference to documentation) to facilitate the handover to the replacement personnel shall be carried out diligently, efficiently, without delay to the provision of the Services and at the sole expense of SSK.

5. **Exclusivity**

- 5.1 Subject to clause 9 (Remedies) and SSK's compliance with clause 3, for the duration of the term of this agreement, SSK shall (subject to any terms of this agreement expressing any contrary intention) have the sole and exclusive right to perform the services set out in Section A of each Part of Schedule 2 ("**Exclusive Services**").
- 5.2 For the services detailed in Section B of each Part of Schedule 2, SSK shall, subject to compliance with the following conditions, have a right of first refusal ("**First Refusal Services**") to perform the services:
 - 5.2.1 SSK confirms that the First Refusal Services will not be sub-contracted unless agreed by the Council;
 - 5.2.2 SSK has, and will continue to perform the First Refusal Services in compliance with the service standards, performance indicators and targets specified in the relevant Service Operating Specification; and
 - 5.2.3 a schedule of rates has been agreed in relation to the First Refusal Services.
- 5.3 If SSK is unable to satisfy the conditions in clause 5.2, the Council shall commission the particular First Refusal Services from a third party.

5.4 For the services detailed in Section C of each Part of Schedule 2, the Council's intention is to maximise commissioning from SSK, as set out in the relevant Service Operating Specifications.

5.5 Notwithstanding clauses 5.1, 5.2 or 5.4, nothing in this agreement shall oblige the Council to do or omit to do anything which:

5.5.1 is incompatible with the lawful exercise of its powers;

5.5.2 is incompatible with the lawful discharge of its functions;

5.5.3 divests it of its statutory powers; or

5.5.4 obliges it not to exercise its powers

and in every instance where there is an inconsistency or conflict between the Council's statutory functions (whether powers or duties) and the provisions of this agreement, the Council shall not be obliged to comply with the terms of this agreement.

5.6 In the event that SSK materially or persistently breaches its obligations in clause 3 which relate to the Services, the Council shall have the option to remove the exclusivity rights in this clause 5.

6. Council's obligations

6.1 The Council will commission the Services from SSK on the terms and conditions of this agreement and as specified in the relevant Service Operating Specifications contained at Schedule 2.

6.2 The Council shall provide SSK with all necessary co-operation and resources reasonably required in relation to this agreement.

6.3 The Council agrees to commission the Services with reasonable care, skill and diligence in accordance with Good Industry Practice and all Applicable Law.

6.4 The Council will agree to reasonable requests to provide SSK with all the necessary information and access to Council Materials, security access information and software interfaces to the Council's other business applications and computer systems to enable SSK to deliver the Services effectively and efficiently, except where such access is demonstrably a breach of Applicable law, or clause 5.2 above.

6.5 Subject to the Council's prior agreement, and receipt of advance notice from SSK, the Council agrees to provide SSK with personnel assistance, including the Council's Project Manager and the Council's Representatives, from time to time as required in order to perform the Services.

6.6 The Council agrees to encourage third parties (such as its agents) to commission services outside the scope of the Services covered by this agreement from SSK.

6.7 The Council shall provide SSK with purchase order numbers as soon as practicable when commissioning services from SSK under this agreement, in order for SSK to comply with its obligations set out in clause 11.3.

6.8 The Council shall provide facilities which enable SSK to perform the Services.

7. Joint Liaison Board, monitoring, reporting and value for money benchmarking

7.1 The Council's Director of Place and SSK's Managing Director shall be the representatives which deal with the management of this agreement. These representatives shall constitute the Joint Liaison Board, which shall be the key decision-making point of contact between the parties.

7.2 Representatives of the Joint Liaison Board shall co-operative with each other in relation to delivery of the Services.

7.3 Each party may change the identity of any of its representatives at any time and each representative may appoint a suitable deputy or alternate to perform some or all of the representative's functions in his absence. Each party shall use reasonable endeavours to procure the continuity of its representatives.

7.4 Each party shall appoint a project manager, or project managers, who shall:

7.4.1 provide prompt and professional liaison with the other party;

7.4.2 have the necessary expertise and authority to commit the relevant party; and

7.4.3 be a member of the Joint Liaison Board.

7.5 SSK shall, within one month of each quarter end, provide the Council with a quarterly executive report detailing (in writing) the progress of the delivery of the Services, including:

7.5.1 a summary of such progress measured against each Service Operating Specification in Schedule 2, including an evaluation as to the level of performance of the Services and the related budget, costs and fees, and the level of commissioning by the Council;

7.5.2 details of any deviations from a Service Operating Specification which are known to or anticipated by SSK, or have been communicated to SSK by the Council (pursuant to clause 7.6);

7.5.3 an indication of the possible effects of any known or anticipated deviation;

7.5.4 a plan detailing the steps that will be taken by SSK to alleviate and remediate the possible effects of any deviation from a Service Operating Specification;

7.5.5 details of any technical or operational improvements to the Services of which SSK becomes aware; and

- 7.5.6 details of such measures as have been introduced to deliver efficiencies (whether providing direct cost savings or otherwise) in the delivery of the Services.
- 7.6 The Council shall, within one month of each quarter end, provide SSK with details of any deviations from a Service Operating Specification for inclusion in SSK's quarterly executive reports detailed in clause 7.5.
- 7.7 SSK shall maintain complete and accurate records of the time spent and materials used by SSK in providing the Services in addition to the relevant prices and rates and allow the Council to inspect and take copies of such records at reasonable times on request.
- 7.8 The Joint Liaison Board shall meet at least quarterly to discuss the reports submitted by SSK pursuant to clause 7.5 and any other matters related to this agreement including past and future performance, potential efficiencies and economics and the parties' strategic objectives.
- 7.9 By reference to each relevant Service Operating Specification, the Joint Liaison Board shall agree a remediation plan and steps to be taken in relation to each deviation from a Service Operating Specification identified pursuant to clauses 7.5 and 7.6.
- 7.10 The Council shall chair meetings of the Joint Liaison Board.
- 7.11 The Joint Liaison Board shall provide an agenda for and minutes of such meetings.
- 7.12 Reports and records prepared by SSK pursuant to this agreement shall be retained by both parties for at least three years following termination of this agreement.
- 7.13 In order to ensure the Services are delivered in an efficient and cost-effective manner, the Joint Liaison Board shall also meet regularly to discuss value for money in relation to the Services (which may, amongst other considerations, include external benchmarking).
- 7.14 The parties shall agree any action points which follow the value for money meetings described in clause 7.13.

8. **Access and security**

- 8.1 Upon reasonable notice and subject to the remainder of this clause **Error! Reference source not found.** (Access and security), the Council shall provide SSK and SSK Personnel with access to such Council IT Systems and Council Premises as may be required for the purpose of providing the Services.
- 8.2 SSK shall and shall procure that SSK Personnel in attendance at Council Premises shall at all times observe and comply with all relevant Council Policies together with any further reasonable instructions or warnings given by the Council orally or in writing from time to time.

- 8.3 SSK shall and shall procure that all of its personnel requiring access to Council IT Systems shall at all times comply with the Council's reasonable instructions and warnings given by the Council orally or in writing from time to time.
- 8.4 The Council's Director of Place (or a representative authorised by the Council's Director of Place) reserves the right to refuse to admit and/or permit access to and/or remove from Council Premises and/or Council IT Systems any member of SSK Personnel who fails to comply with clauses 8.2 of 8.3.
- 8.5 SSK shall continually monitor compliance with such policies and procedures and the other provisions of this clause **Error! Reference source not found.** and shall promptly implement corrective measures where non-compliance is discovered or suspected.
- 8.6 The Council reserves the right to suspend and/or revoke SSK's right to access the Council IT Systems at any time if SSK is, or the Council reasonably suspects that SSK is, in breach of this agreement or has otherwise jeopardised the security of the whole or any part of the Council IT Systems.

9. Remedies

- 9.1 If SSK fails to perform any of the Services in accordance with a Service Operating Specification, the Service Operating Specification shall set out the relevant remedy in relation to a Service.
- 9.2 If a Service Operating Specification does not set out a remedy for a failure to perform the Services in accordance with the Service Operating Specification, the parties shall agree the categorisation of the breach as follows:
- 9.2.1 Status Level 1 – a breach which must be remedied within 15 Business Days;
- 9.2.2 Status Level 2 – a breach which must be remedied within 5 Business Days;
and
- 9.2.3 Status Level 3 – a breach which must be remedied immediately.
- 9.3 If the parties cannot agree the categorisation of a breach within 3 Business Days of the breach arising, the dispute resolution procedure in clause 28 shall be followed.
- 9.4 Once a breach of the agreement is categorised, the Council may, without limiting any of its other rights or remedies:
- 9.4.1 require SSK at its own cost to:
- 9.4.1.1 re-perform the Services and/or
- 9.4.1.2 remedy any deficiency or non-compliance in the Services as soon as possible and in any event within 10 Business Days;
- 9.4.2 refuse to accept any subsequent performance of the Services which SSK attempts to make;

- 9.4.3 recover from SSK any costs incurred by the Council in obtaining substitute services from a third party;
- 9.4.4 where the Council has paid in advance for Services that have not been provided by SSK in accordance with this agreement to require SSK to refund the Charges relating to such Services on demand; or
- 9.4.5 claim damages for any other costs, loss or expenses incurred by the Council which are in any way attributable to SSK's failure to perform the Services in accordance with this agreement and the relevant Service Operating Specification by the relevant date(s).

10. Annual Budget Process

- 10.1 Both parties agree to undertake an annual budget process, which aims to improve efficiencies and reduce costs to the Council, which shall operate as follows:
 - 10.1.1 the Council shall communicate to SSK:
 - 10.1.1.1 its budget for purchase of the Services for the proceeding Year of the agreement; and
 - 10.1.1.2 any suggestions to SSK as to how Services should be delivered for the proceeding Year of the agreement;
 - 10.1.2 based on the cost of provision of the Services for the present Year of the agreement (as set out in the Service Operating Specifications) as a benchmark, SSK shall prepare a report for the Council which details SSK's proposals for delivering the Services for the proceeding Year of the agreement;
 - 10.1.3 SSK's report shall detail proposals for changes to be made to the Services including, without limitation:
 - 10.1.3.1 any increase or reduction in volume for the Services;
 - 10.1.3.2 any amendments to the standard and performance of the Services;
 - 10.1.3.3 any efficiencies SSK will achieve in future performance of the Services; and
 - 10.1.3.4 any amendments to the cost for the Services which are required due to the changes proposed by SSK;
 - 10.1.4 on completion of the report, the parties shall meet to consider SSK's proposals set out in the report;
 - 10.1.5 if the Council approves the proposals made by SSK, the annual budget for the proceeding Year shall be agreed and the Service Operating Specifications at Schedule 2 shall be varied (as appropriate) by the parties;

- 10.1.6 if, however, the Council does not approve any proposals made by SSK, it shall communicate further suggestions or proposals to SSK, and SSK shall make subsequent proposals to the Council (taking into account the Council's suggestions or proposals);
- 10.1.7 if the Council approves the subsequent proposals made by SSK, the annual budget for the proceeding Year shall be agreed and the Service Operating Specifications at Schedule 2 shall be varied (as appropriate) by the parties; and
- 10.1.8 if the Council does not approve the subsequent proposals made by SSK, the dispute resolution procedure in clause 28 shall be followed by the parties.
- 10.2 Both parties shall work in a transparent manner in relation to the annual budget process to drive efficiencies and maximise savings in relation to the provision of the Services.
- 10.3 Once the annual budget for the proceeding Year of the agreement is agreed by the parties, each party shall ensure that the annual budget is reflected in its respective financial plan.

11. Charges

- 11.1 In consideration of SSK's provision of the Services in accordance with this agreement the Council shall pay the Charges in accordance with this clause **Error! Reference source not found.**1 and the relevant Service Operating Specifications at Schedule 2.
- 11.2 The Charges:
- 11.2.1 exclude amounts in respect of VAT, which the Council shall additionally be liable to pay to SSK at the prevailing rate; and
- 11.2.2 include all taxes and duties other than VAT incurred (directly or indirectly) by SSK in connection with the performance of the Services.
- 11.3 SSK shall submit invoices at the intervals set out in the relevant Service Operating Specifications. SSK shall ensure that each invoice specifies the relevant Council contract number, purchase order number and contact and SSK's VAT registration number and shall contain any additional information provided for in this agreement. Any invoice which does not comply with these requirements shall be deemed to have been incorrectly submitted and shall not be payable.
- 11.4 The Council shall pay correctly submitted invoices in respect of Services that comply with this agreement within 15 days of the invoice date (providing the Council receives such invoice within 1 day of the invoice date), or as otherwise specified in a Service Operating Specification.

- 11.5 If the Council disputes the whole or any part of an invoice, it may withhold payment provided that it gives notice in writing to SSK of any intention to withhold payment, specifying the amount to be withheld and the grounds for withholding payment. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. SSK shall provide all such evidence as may be reasonably necessary to verify the disputed invoice. If the parties have not resolved the dispute within 30 days of the Council giving notice to SSK, the dispute shall be resolved in accordance with clause **Error! Reference source not found.** (Dispute resolution). Where only part of an invoice is disputed, the Council shall pay the undisputed amount on the due date as set out in clause **Error! Reference source not found.**.
- 11.6 SSK shall maintain complete and accurate records of the time spent and materials used by SSK in providing the Services and allow the Council to inspect and take copies of such records at reasonable times on request.

12. **Change Control Procedure**

No Change shall be valid unless made in accordance with the Change Control Procedure at Schedule 3.

13. **Intellectual Property Rights**

- 13.1 All Intellectual Property Rights arising in connection with this agreement shall belong to the Council and SSK hereby assigns absolutely with full title guarantee all such Intellectual Property Rights to the Council, such that such rights shall immediately on creation vest in the Council.
- 13.2 SSK waives and shall procure that SSK Personnel shall waive any moral rights arising in the performance of the Services to which they are now or may at any future time be entitled under Chapter IV of the Copyright, Designs and Patents Act 1988 or any similar provisions of Applicable Law.
- 13.3 SSK shall not register, attempt to register or procure or assist any third party to register or attempt to register in any part of the world any domain name or trade mark wholly or partly comprised of or incorporating the Council's name or any variation or imitation of the same without the Council's prior written consent (which may be given or withheld in the Council's absolute discretion).
- 13.4 SSK represents, warrants and undertakes that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant and perform all its obligations under and in accordance with this agreement.
- 13.5 SSK shall promptly at the Council's expense do (or procure) all such further acts and things and the execution of all such other documents as the Council may from time to time require for the purpose of securing for the Council the full benefit of this agreement, including all right, title and interest in and to the Intellectual Property Rights assigned to the Council pursuant to this clause **Error! Reference source not found.**

13.6 All the Council's Confidential Information and Council Materials (including all Intellectual Property Rights in the same) supplied or provided by the Council shall be and shall remain the exclusive property of the Council or relevant third party and SSK shall acquire no right, title or interest in or to the same. SSK shall use such items solely for the purpose of providing the Services.

14. Indemnities

14.1 Without prejudice to any other right or remedy the Council may have, SSK shall indemnify, keep indemnified and hold harmless the Council and each of its officers and employees in full and on demand from and against all claims, liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation, whether arising in tort (including negligence), in contract or otherwise whether or not such losses were foreseeable or foreseen at the date of this agreement and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses), suffered or incurred by the Council arising out of or in connection with:

14.1.1 any claim by a third party arising from SSK's breach or negligent performance or non-performance of its obligations under this agreement;

14.1.2 any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Council's receipt of the Services;

14.2 If the Council wishes to claim under an indemnity set out in clause 14.1, it shall:

14.2.1 as soon as reasonably practicable, give written notice of such claim to SSK, specifying the nature of the claim in reasonable detail;

14.2.2 if the claim relates to a claim or action made against the Council by a third party (a "**Third Party Claim**"):

14.2.2.1 not make any admission of liability, agreement or compromise in relation to the Third Party Claim without SSK's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned), provided that Council may settle the Third Party Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to SSK, but without obtaining SSK's consent) if the Council reasonably believes that failure to settle the Third Party Claim would be prejudicial to it in any material respect;

14.2.2.2 subject to SSK providing security to the Council to the Council's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as SSK may reasonably request to avoid, dispute, compromise or defend the Third Party Claim.

- 14.3 If a payment due from SSK under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Council shall be entitled to receive from SSK such amounts as shall ensure that the net receipt, after tax, to the Council in respect of the payment is the same as it would have been were the payment not subject to tax.
- 14.4 SSK shall not be liable under the indemnity in clause 14.1 to the extent (if any) to which any infringement is caused by use of Council Materials provided by the Council in accordance with this agreement.

15. Liability

- 15.1 Neither party limits its liability for:
- 15.1.1 death or personal injury caused by its negligence or that of its employees, agents or sub-contractors;
 - 15.1.2 fraud or fraudulent misrepresentation by it or its employees;
 - 15.1.3 breach of any warranty as to title implied by Applicable Law; or
 - 15.1.4 any other act or omission, liability for which may not be limited under Applicable Law.
- 15.2 Subject to clause **Error! Reference source not found.**, the parties' annual aggregate liability in connection with this agreement shall in no event exceed the total sum payable for the Services for the Year in which the claim arises.

16. Insurance

- 16.1 SSK shall take out and maintain in force at its own cost during the term of this agreement and for six years after its termination or expiry at least the following insurance policies with reputable insurers to cover its relevant potential liabilities in connection with this agreement:
- 16.1.1 public liability insurance with a limit of at least £10 million per claim;
 - 16.1.2 professional indemnity insurance with a limit of at least £1 million per claim; and
 - 16.1.3 employers' liability insurance with a limit of at least £10 million per claim.
- 16.2 SSK shall ensure that the Council's interest is noted on each insurance policy referred to in clause **Error! Reference source not found.** On the Council's written request, SSK shall provide the Council with a copy of each insurance policy referred to in clause **Error! Reference source not found.** together with any amendments, extensions or variations to the same. On the renewal of each policy, SSK shall promptly send the Council evidence satisfactory to the Council (acting reasonably) that each policy has been renewed.
- 16.3 SSK shall during the term of this agreement and for six years following its termination or expiry:

- 16.3.1 do or omit nothing to invalidate any insurance policy, entitle an insurer to refuse to pay any claim or prejudice the Council's entitlement under such policies;
 - 16.3.2 procure that the terms of such policies are not altered in such a way as to diminish the benefit of the policies; and
 - 16.3.3 ensure that any insurance monies received in respect of any loss contemplated by this clause **Error! Reference source not found.** shall be applied in making good such loss.
- 16.4 For the avoidance of doubt, none of the requirements contained in this clause **Error! Reference source not found.** as to the insurance cover to be maintained by SSK shall in any manner limit SSK's liabilities and obligations under this agreement.

17. **Right to audit**

- 17.1 SSK shall allow Council auditors or its external auditors or other advisers to the Council to access any of SSK's premises, systems, personnel, records or reports prepared pursuant to clause 7 (Joint Liaison Board, monitoring and reporting) as may be reasonably required in order to:
- 17.1.1 fulfil any legally enforceable request by any regulator;
 - 17.1.2 undertake verifications of the accuracy of any of SSK's invoices or identify suspected fraud; and/or
 - 17.1.3 undertake verification that the Services are being provided and all obligations of SSK are being performed in accordance with this agreement.
- 17.2 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt SSK or delay the provision of the Services and that, where possible, individual audits are co-ordinated with each other to minimise any disruption.
- 17.3 Subject to the Council's obligations of confidentiality, SSK shall provide the Council (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit.
- 17.4 The Council shall provide at least 15 Business Days' notice of its intention to conduct an audit, unless such audit is conducted in respect of a suspected fraud or required by the Council's regulator, in which event no notice shall be required.
- 17.5 The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause **Error! Reference source not found.**
- 17.6 If an audit identifies that the Council has overpaid any Charges under this agreement, SSK shall pay to the Council the amount overpaid within 15 days from the date of receipt of an invoice or notice to do so.

18. Assignment and Sub-contracting

- 18.1 Subject to clause 18.2, neither SSK nor the Council shall assign or transfer this agreement or the benefits or obligations hereof without the written consent of the other. Such consent shall not be unreasonably withheld or delayed.
- 18.2 The Council shall be entitled to assign this agreement in the event of a re-organisation of local government functions within Greater Manchester, either as a result of any direction from central government or through voluntary arrangements made between any of the local authorities within Greater Manchester.
- 18.3 Subject to the Council's written consent, SSK may sub-contract Services. However if SSK sub-contracts any Services, it shall ensure that such Services are sub-contracted on terms which are comparable with this agreement.

19. Confidentiality

- 19.1 Subject to clauses **Error! Reference source not found.** and 19 (Freedom of information), each party (the "**Recipient**") shall keep the other party's (the "**Discloser's**") confidential information concerning the business, affairs, customers, clients or suppliers of the other party ("**Confidential Information**") confidential and:
- 19.1.1 use such Confidential Information solely for the performance and/or use of the Services in accordance with this agreement; and
- 19.1.2 keep such Confidential Information strictly confidential and not, without the Discloser's prior written consent, disclose it to any other person.
- 19.2 The provisions of clause **Error! Reference source not found.** shall not apply to any Confidential Information that:
- 19.2.1 is already in the public domain or comes into the public domain in the same or substantially the same form in which it has been disclosed in connection with this agreement without breach of this agreement; or
- 19.2.2 is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required) provided that a particular disclosed or discovered use, combination, analysis, form or collection of information will not be in the public domain simply because it could be re-created using information in the public domain.
- 19.3 The Recipient shall give the Discloser as much notice of any disclosure required under clause **Error! Reference source not found.** as is reasonable and lawful in the circumstances (if any) and shall provide reasonable assistance to the Discloser in avoiding or limiting the required disclosure.
- 19.4 SSK acknowledges that the Council's Confidential Information includes the Council Materials and the results of the Services.

20. **Freedom of information**

- 20.1 Notwithstanding clause 19, the Freedom of Information Act 2000 (“**FOIA**”) and the Environmental Information Regulations 2004 (“**EIR**”) applies to the Council and the Council may be obliged to disclose, on written request, recorded information held by the Council. Information provided by the Supplier in connection with the Services may have to be disclosed by the Council in response to such a request, unless the Council decides that one of the statutory exemptions under FOIA or EIR applies. The Council may also include certain information in the publication scheme, which it maintains under FOIA or EIR.
- 20.2 The Council may, in certain circumstances, consider it appropriate to ask SSK for its views as to the release of any information in accordance with the Code of Practice issued under section 45 FOIA or under EIR, before a decision on how to respond to a request is made. SSK accepts that the Council must comply with a strict timetable and will provide a response to any consultation within two days.
- 20.3 SSK accepts that the decision as to which information will be disclosed is reserved to the Council, notwithstanding any consultation with SSK.

21. **Publicity**

SSK shall not make, or permit any person to make, any public announcement concerning this agreement without the Council's prior written consent (such consent not to be unreasonably withheld or delayed) except to the extent required by Applicable Law. SSK shall not refer to this agreement, the Council or any of the Council's products, services or brands in any customer list, presentation, article or other promotional material without the Council's prior written consent.

22. **Data protection**

- 22.1 If, in the performance or management of the Services, SSK is required to process personal data as the Council's data processor SSK shall:
 - 22.1.1 do so only for the purpose of performing the Services;
 - 22.1.2 comply with all relevant instructions or requests that the Council may give to SSK from time to time concerning such processing including:
 - 22.1.2.1 the provision of explanatory information on the Council's business, processes, systems and/or controls; and
 - 22.1.2.2 the delivery up of any relevant personal data in such form as the Council may reasonably request;
 - 22.1.3 take appropriate technical and organisational security measures to safeguard such data against unauthorised or unlawful processing and against accidental loss or destruction of, or damage to, that data, having regard to:
 - 22.1.3.1 the nature of such data and the harm which could result from such processing, loss, destruction or damage; and

- 22.1.3.2 the state of technological development and the cost of implementing such measures;
- 22.1.4 As part of the measures referred to in clause **Error! Reference source not found.**:
 - 22.1.4.1 comply with any minimum information security standards agreed in writing for the purposes of this agreement;
 - 22.1.4.2 maintain all information security certifications current as at the Commencement Date;
 - 22.1.4.3 subject to clause **Error! Reference source not found.** and **Error! Reference source not found.**, maintain a standard of information security that is at least equivalent to that employed for its other customers (if any) for similar categories of personal data;
 - 22.1.4.4 procure that its employees who access such data are reasonably reliable, do so only to the extent necessary for their role, are subject to a duty of confidence that covers all personal data processed under this agreement and receive reasonable data protection and privacy compliance training (including a knowledge assessment) at least once per year (unless otherwise agreed in writing by the Council);
 - 22.1.4.5 logically separate all personal data processed for the purposes of this agreement from all other personal data that it processes;
- 22.1.5 allow the Council access (on reasonable notice) to its premises and/or any other location where personal data is processed under this agreement to allow the Council to audit SSK's compliance with this clause **Error! Reference source not found.**;
- 22.1.6 at any time upon request, and in any event upon termination or expiry of this agreement, (unless the Council agrees otherwise in writing in each case) deliver up all relevant personal data that SSK holds in connection with this agreement in such form as the Council may reasonably request. Following such delivery up, and at such time and in such manner as the Council shall reasonably direct, SSK shall promptly and securely delete or destroy all such personal data and certify that it has done so in a form reasonably satisfactory to the Council;
- 22.1.7 not cause or allow such data to be transferred out of or otherwise processed outside the European Economic Area;
- 22.1.8 not pass such data to any third party except:
 - 22.1.8.1 with the Council's prior written consent in each case; and

22.1.8.2 where SSK has entered into a written contract with that third party under which that third party agrees to obligations that are materially equivalent to those set out in this clause **Error! Reference source not found.**;

22.1.9 procure that all third parties to whom personal data is passed pursuant to clause **Error! Reference source not found.** comply with the terms of this clause **Error! Reference source not found.**;

22.1.10 notify the Council:

22.1.10.1 of the location where any personal data is processed under this agreement;

22.1.10.2 promptly (and in any event within two Business Days) of receiving any complaint, subject access request or other request (such as from any applicable government, agency or regulator) in respect of personal data, except where doing so would breach Applicable Laws;

22.1.10.3 immediately in the event that SSK becomes aware of any unauthorised or unlawful processing or accidental loss or destruction of, or damage to, such data; and

22.1.10.4 promptly in the event of any material change to SSK's processes, systems and/or controls regarding the processing of personal data for the purposes of this agreement;

22.1.10.5 where the Council requires assistance from SSK in order to respond to requests, queries and/or investigations in respect of the personal data or requires that SSK help the Council in reconstructing and/or otherwise safeguarding the personal data, SSK shall provide the Council with such assistance as the Council reasonably requests within any timescales specified by the Council. If no timescales are specified, SSK must respond to and comply with the Council's request within a reasonable period of time after receiving the request for assistance;

22.1.10.6 except as expressly contemplated by this agreement, not combine or supplement any personal data provided to SSK (whether directly or indirectly) with any other data (including any other personal data), without the prior written consent of the Council; and

22.1.10.7 maintain reasonably appropriate processes, systems and controls to guard against any act or omission that would put the Council (as data controller) in breach of Applicable Laws relating to data protection or privacy.

22.2 For the purpose of this clause **Error! Reference source not found.** the terms **"personal data"**, **"sensitive personal data"**, **"data controller"**, **"data processor"** and **"process"** have the meanings given to them in the Data Protection Act 1998.

23. **Ethics**

23.1 SSK shall comply with all Applicable Laws relating to anti-bribery and anti-slavery including the Bribery Act 2010 and the Modern Slavery Act 2015.

23.2 SSK shall ensure that any person associated with SSK who performs services or supplies goods in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on SSK in this clause **Error! Reference source not found.** ("**Relevant Terms**"). SSK shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Council for any breach by such person of any of the Relevant Terms.

23.3 For the purpose of this clause **Error! Reference source not found.**, a person associated with SSK includes SSK's employees (whether or not they are SSK Personnel) and any of SSK's sub-contractors.

23.4 SSK shall use all reasonable endeavours to promote Social Value in the performance of the Services and its wider activities within Stockport.

23.5 The Council may terminate this agreement in accordance with clause 24 if SSK fails to comply in the performance of the Services with legal obligations related to environmental, social or labour law.

24. **Termination**

24.1 Either party may terminate this agreement by giving the other party no less than 12 months' notice.

24.2 The Council may terminate this agreement immediately on written notice if:

24.2.1 SSK fails to perform the Services in accordance with the agreement for a period of 3 months and the Council has notified SSK in writing of such failure;
or

24.2.2 any of SSK's directors or other officers are guilty of fraud, dishonesty, gross negligence or gross misconduct or acts in any manner which in the Council's reasonable opinion brings or is likely to bring SSK or the Council into disrepute or is materially adverse to the interests of the Council.

- 24.3 Each party shall be entitled to terminate this agreement immediately on written notice to the other if the other party:
- 24.3.1 commits any continuing or material breach of any of the provisions of this agreement and, if the breach is capable of remedy, fails to remedy the same within 30 days of receipt of written notice giving full particulars of the breach and the action required to remedy such breach;
 - 24.3.2 repeatedly breaches any of the terms of this agreement in a manner inconsistent with an intention or ability to give effect to the terms of this agreement;
 - 24.3.3 makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, scheme of arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts when due or otherwise becomes or suffers or is the subject of a distraint, writ of control or warrant of control or event of insolvency; or
 - 24.3.4 ceases or threatens to cease to carry on all or substantially the whole of its business.
- 24.4 In any of the circumstances referred to in this clause **Error! Reference source not found.** in which the Council may terminate this agreement, the Council may instead terminate any part or element of the Services. In the event of such partial termination:
- 24.4.1 the Charges shall be reduced proportionately to the reduction in scope of the relevant Services; and
 - 24.4.2 SSK shall perform such of its obligations under clause **Error! Reference source not found.** (Consequences of termination) as are relevant in relation to the terminated parts or elements of the Services.

25. **Consequences of termination**

- 25.1 Upon expiry or termination of this agreement for any reason:
- 25.1.1 the Council shall stop using the Services;
 - 25.1.2 SSK shall promptly return or (at the Council's option) destroy all the Council's Confidential Information and Council Materials in its possession or control and, if required, to do so by the Council, certify in writing that it has done so;
 - 25.1.3 SSK shall make available to the Council free of charge all information and documentation required to facilitate the handover of the Services to the Council or a replacement supplier;
 - 25.1.4 SSK will make available to the Council such of SSK Personnel as the Council may reasonably require to ensure a satisfactory handover of the Services to the Council or a replacement supplier (for which the parties will agree charges if appropriate); and

25.1.5 SSK will render all reasonable assistance and provide all information and documentation as may reasonably be required by the Council or a replacement supplier in relation to this agreement (for which the parties will agree charges as appropriate).

26. Handover

26.1 Other than as agreed by the parties pursuant to the annual budget process, SSK shall not charge the Council or any Replacement Provider for any expenditure incurred howsoever in carrying out the handover arrangements as set out in this clause 26. Where such expenditure is not covered by an annual budget process, SSK may charge the Council or any Replacement Provider for its reasonable expenditure incurred in carrying out the handover arrangements.

26.2 At the end of the term (and howsoever arising) SSK shall forthwith deliver to the Council upon request all the Council Materials relating to the agreement.

26.3 SSK shall use all reasonable endeavours to transfer all data in accordance with industry standard format (or any format reasonably specified by the Council or a Replacement Provider) relating to the Services including requests for Services to be undertaken which have not been completed.

26.4 During the period of 15 months preceding the expiry of this agreement or immediately after the Council has given notice to terminate the whole or part of the agreement, SSK shall:

26.4.1 promptly, at the request of the Council, fully and accurately disclose to the Council the TUPE Information and permit the Council to use the TUPE Information to inform any prospective tenderer and/or Replacement Provider about the anticipated Relevant Employees. If, during the period between supplying the TUPE Information and the Relevant Transfer, there is any material change in the information supplied or new information is discovered, SSK shall promptly disclose to the Council the updated information, and

26.4.2 use all reasonable endeavours to co-operate with any other reasonable request made by the Council concerning the TUPE Information.

26.5 SSK shall discharge all obligations and liabilities in respect of the Relevant Employees up to and including the Relevant Transfer Date:

26.5.1 SSK warrants that reasonable care will be used in the preparation of the TUPE Information and that reasonable efforts will be taken to ensure that it will be complete (insofar as it is reasonable for the Council to require such information to be provided) and accurate in all respects as at the date the information is provided. SSK shall indemnify and keep indemnified the Council and any Replacement Provider against any loss caused to the Council or any New Provider by any inaccuracy or incompleteness in such information or by any changes in the information which have not been communicated to the Council (whether relating to the number, identity or

details of the Relevant Employees or otherwise) which occur prior to the Relevant Transfer Date;

26.5.2 SSK shall indemnify the Council and the Replacement Provider in full from and against all costs, claims, liabilities, expenses or demands (including legal costs) whether direct, indirect or consequential which the Council and/or any Replacement Provider incurs arising from:

26.5.2.1 any act or omission of SSK or any sub-contractor in relation to the Relevant Employees or any representative thereof;

26.5.2.2 any claim by an employee or former employee of the contractor or any sub-contractor who is not a Relevant Employee, and

26.5.2.3 any representations made by SSK or any sub-contractor in relation to employment by the Council and/or any Replacement Provider;

26.5.3 the Council shall indemnify SSK in full from and against all costs, claims, liabilities, expenses or demands (including legal costs) whether direct, indirect or consequential which SSK incurs arising from any act or omission of the Council in relation to the Relevant Employees;

26.5.4 in the event that SSK enters into any sub-contract in connection with the Services, it shall impose obligations on its sub-contractors in the same terms as those imposed on it pursuant to clauses 26.5.1 to 26.5.3 inclusive and shall procure that each sub-contractor complies with such terms. SSK shall indemnify the Council and keep the Council indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of the sub-contractors to comply with such terms.

26.6 Save on expiry or termination of this agreement, if the employment of any LGPS Employee transfers to another employer (by way of a transfer under TUPE) SSK shall and shall procure that any such employer shall consult with and inform those LGPS Employees of the pension provisions relating to that transfer.

26.7 At the end of the term (howsoever arising) and for a period of six months after the end of the term, SSK shall co-operate free of charge with the Council and any new provider appointed by the Council to continue or take over the performance of the agreement in order to ensure an effective handover of all work then in progress.

27. Force majeure

27.1 If a party (an "**Affected Party**") is prevented from performing any of its obligations under this agreement by a Force Majeure Event, provided it has complied with clause **Error! Reference source not found.**, it shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such

obligations. The time for performance of such obligations shall be extended accordingly.

27.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party. The Council shall not be obliged to pay in respect of any Services that SSK is prevented from supplying as a result of a Force Majeure Event.

27.3 The Affected Party shall:

27.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration and the effect of the Force Majeure Event on its ability to perform any of its obligations under this agreement;

27.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations; and

27.3.3 as soon as reasonably possible after the end of the Force Majeure Event, notify the other party of this in writing and resume performance of its obligations under this agreement.

27.4 If SSK is excused from the provision of the Services in accordance with this clause 27 and, as a result, the provision of any of the Services is substantially prevented, hindered, degraded or delayed for more than three consecutive Business Days, then at the Council's option and without limiting any other rights the Council may have under or in connection with this agreement the Council may:

27.4.1 procure those Services from a third party where practical and SSK shall provide all such assistance to the Council as the Council may reasonably require; and

27.4.2 remove the affected Services from the scope of this agreement, in which case SSK shall not provide such Services and the Council shall not be obliged to pay for such Services.

27.5 The failure of any sub-contractor to perform any obligations owed to SSK shall only constitute a Force Majeure Event with respect to SSK's obligations if and to the extent that the failure by the sub-contractor is itself caused by a Force Majeure Event. In such circumstances, SSK shall be obliged forthwith to use an alternative sub-contractor if to do so would enable SSK to resume the provision of the Services.

27.6 If a Force Majeure Event prevents SSK from performing any of its obligations under this agreement for a continuous period in excess of 30 Business Days, the Council may, without liability, immediately terminate this agreement by written notice provided the relevant Force Majeure Event remains subsisting at the time that it give such notice.

28. **Dispute resolution**

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

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

28.1.2 if the Joint Liaison Board is unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Council's Director of Place and the Managing Director of SSK, who shall attempt in Good faith to resolve the Dispute;

28.1.3 if the Council's Director of Place and the Managing Director of SSK are unable to resolve the Dispute within 30 days of the referral of the Dispute, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("**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 (an "**ADR notice**") to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice.

28.2 The parties shall participate and continue to participate in good faith in the mediation in an attempt to resolve the Dispute.

28.3 If the Dispute is not resolved within 60 days (or such longer period as may be agreed by the parties) after service of the ADR notice, no further action shall be taken in respect of the Dispute.

29. **Waiver**

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 or 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.

30. **Notices**

30.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or by a signed-for next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

30.2 Any notice shall be deemed to have been received:

30.2.1 if delivered by hand, on signature of a delivery receipt or, if not signed for, at the time the notice is left at the correct address;

30.2.2 if sent by pre-paid first-class post, at 09:00 on the second Business Day after posting; and

30.2.3 if sent by a signed-for next working day delivery service, at the time recorded by the delivery service.

30.3 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.

30.4 A notice given under this agreement is not valid if sent by email.

31. **Entire agreement**

31.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter and any conflict shall be dealt with in accordance with clause 32 (Conflict).

31.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

32. **Conflict**

32.1 If there is any inconsistency between the provisions of the main body of this agreement (clauses 1 to 36) and the schedules, the provisions shall take the following descending order of precedence:

32.1.1 the provisions in the main body of this agreement;

32.1.2 Schedule 1 (Special Conditions);

32.1.3 Schedule 2 (Service Operating Specifications); and

32.1.4 Appendix 1 (the Council's Policies and Documents).

32.2 If the above order of precedence does not resolve an inconsistency, the parties shall resolve the inconsistency in accordance with the provisions in clause 28 (Dispute Resolution Procedure).

33. **Severance**

33.1 If any provision of this agreement 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 provisions or part-provision under this clause shall not affect the validity and enforceability of the rest of the agreement.

33.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

34. **Third party rights**

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this agreement.

35. **Governing law**

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.

36. **Jurisdiction**

Each party irrevocably agrees that the courts of England 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).

Executed as a deed by the parties or their duly authorised representatives on the date of this deed.

SCHEDULE 1

Special Conditions

[DN: This schedule will set out specific, service-related conditions, which are separate from the overarching provisions in the main body of the agreement and relate to particular service streams.

For example, services covered by Part 1 of Schedule 2 (highways, street lighting and signage) will be covered by the terms and conditions of the standard form NEC3 contract.]

SCHEDULE 2

Service Operating Specifications

[This Schedule will contain specifications detailing what types of services SSK will perform for the Council and the applicable rates/costs for these services.

The services are split into three broad areas, with distinct service streams under each area. Each service stream will have a distinct specification and associated rates/costs so the parties are aware of what services are expected to be delivered by SSK, the relevant standards and targets which apply to these services and the costs associated with the services.

Services supplied from the Council to SSK will be dealt with under a separate support/host services agreement so as not to add uncertainty/confusion to this agreement.

Section A – Exclusive Services

1. Waste and Recycling
2. Greenspace (Gates and Barriers Inspections, Arboriculture, Playground Maintenance)
3. Streetcare, (Ground Maintenance, Street Cleansing)
4. Winter Maintenance
5. Highways Reactive; (inc Street Lighting Reactive, Signage Services)

Section B – First Refusal Services

6. Highways Planned; (inc Street Lighting Planned)

Section C – Other Services

7. Commercial Waste Collections *from Council Buildings* (Commercial Trade Waste & Skips)
8. Building Cleaning Services
9. Security (Security Control Room Services, Mobile Patrol Services, Static Guarding Services, Fire Alarm Services, Intruder Alarm Services)]

SCHEDULE 3

Part 1

Change Control Procedure

1. Principles

This schedule 3 sets out the procedures for processing a Change.

Unless otherwise agreed by the parties in writing, no Change shall be incorporated into this agreement except in accordance with the provisions of this schedule **Error! Reference source not found..**

The Council may at any time request, and SSK may at any time recommend, a Change only in accordance with this Change Control Procedure.

Both parties agree to act reasonably and in good faith in respect of requesting or recommending a Change and in the implementation of any Changes.

Until such time as a Change is made in accordance with this Change Control Procedure, the Council and SSK shall continue to perform their obligations under this agreement in accordance with its terms prior to such Change.

Any discussions which may take place between the Council and SSK in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.

Any work undertaken by SSK and SSK Personnel which has not been authorised and documented in advance in accordance with this Change Control Procedure (or otherwise agreed in writing by the parties) shall be undertaken entirely at the expense and liability of SSK.

The parties shall actively mitigate the impact of any Change and shall, wherever possible, implement the Change using current resources and assets.

Where a Change is requested or recommended, the Council's Project Manager and SSK's Project Manager shall endeavour to negotiate the terms of such Change in good faith.

Either party shall have the right (acting reasonably and in good faith) to withdraw from a Change at any time before the Change Control Procedure has been followed in full by both parties.

Each party shall do all things necessary, including the execution of documentation, to implement a Change once it has been agreed between the parties.

Procedures

Discussions between the Council and SSK concerning a Change shall result in any one of the following:

no further action being taken;

a request for a Change by the Council; or

a recommendation of a Change by SSK.

Where the Council makes a written request for a Change, SSK shall, unless otherwise agreed, submit to the Council two copies of a change control note in the form set out in the annex to this schedule **Error! Reference source not found.** (Change Control Notice) or CCN) signed by an authorised signatory of SSK within 20 Business Days of the date of the request.

Where SSK makes a recommendation for a Change, it shall submit to the Council two copies of a CCN signed by an authorised signatory of SSK.

When SSK submits a CCN to the Council, the Council shall perform an assessment of the CCN and respond to SSK within 20 Business Days, advising whether:

the Council requires further information or any amendments to the CCN (which will constitute a rejection of the CCN);

the Council has approved the CCN; or

the Council has rejected the CCN.

If the Council rejects the CCN, SSK may resubmit the CCN with amendments to the Council and the provisions of paragraph **Error! Reference source not found.** of this schedule **Error! Reference source not found.** shall apply until the CCN is approved.

If the Council fails to respond to a CCN within 20 Business Days of receiving it, it shall be deemed to have rejected the CCN.

Once a CCN has been approved by the Council, the Council shall arrange for the two copies of the CCN submitted by SSK to be signed by or on behalf of the Council by an authorised signatory and shall return one of the signed copies of the CCN to SSK.

A CCN signed by an authorised signatory of each of the Council and SSK in accordance with paragraph **Error! Reference source not found.** of this schedule **Error! Reference source not found.** shall constitute an amendment to this agreement.

Implementing a Change

SSK shall implement or procure the implementation of a CCN signed by an authorised signatory of each party in accordance with paragraph **Error! Reference source not found.** of this schedule **Error! Reference source not found.**.

Potential impact of a Change on the Charges

SSK shall not be entitled to increase the Charges or impose any new Charges if a proposed Change can be implemented using SSK's then current resources covered by the existing Charges.

For the avoidance of doubt, those Changes which SSK shall carry out at its own cost include Changes:

required to remedy a breach of this agreement by SSK;
that arise from a requirement on SSK to comply with Applicable Law;
required for SSK to perform the Services in accordance with the terms of this agreement; and
required by SSK as a result of its decision to delegate its obligations under this agreement (in whole or in part) to an alternative sub-contractor.

On request by the Council, SSK shall provide:

detailed reasons as to why SSK believes a Change (other than those listed in paragraph **Error! Reference source not found.** of this schedule **Error! Reference source not found.**) may be chargeable (together with any supporting information reasonably requested by the Council);

evidence that it has reviewed alternatives to implement the relevant Change without increasing the Charges; and/or

evidence that it has minimised the impact of the relevant Change on the Charges.

Part 2
Change Control Notice

CCN Reference No:	
Change Control Notice (" CCN ") to the agreement for the provision of services between the Council and SSK dated [date] (the " agreement ")	
Title of Change:	
Originator	
Date:	
Reason for Change:	
Description of Change (giving full details, including any specifications, effect on the Services and other operational and management changes):	
Timetable for implementation, together with any proposals for acceptance:	
Likely effect, if any, on other provisions of the agreement, including:	
Definitions	
Term	
Charges	
The parties' responsibilities/obligations	
Working practices, including the parties' resource requirements, security arrangements and audit requirements	
Limitation of Liability	
Insurance	
Intellectual Property Rights	
Termination provisions, including compensation on termination and termination assistance	

All defined terms in the agreement shall, unless expressed to the contrary or the context otherwise requires, shall have the same meanings where used in this CCN.

This CCN shall be interpreted in accordance with this agreement, all terms and conditions of which shall continue to have full force and effect, except to the extent varied by this CCN.

Signed for and on behalf of

Solutions SK Limited

by

Title

Date

Signed for and on behalf of

Stockport Metropolitan Borough Council

by

Title

Date

SIGNATURE PAGE

The common seal of **STOCKPORT METROPOLITAN BOROUGH COUNCIL**

was affixed to this deed in the presence of:

- 1 2
- 3 4
- 5 Name: 8
- 6
- 7

Authorised Signatory

Name:

EXECUTED as a Deed by

SOLUTIONS SK LIMITED acting by a director in the presence of

- 9 10
- 11 13
-
- 12 Director

.....

Signature of witness

Name of witness.....

Address.....

.....

.....

APPENDIX 1

The Council's Policies and Documents

[Any relevant Council policies, to which SSK must adhere, should be appended here. For example, any policies related to:

Health and Safety

Security

Expenses

Managed Services Document

ASP Document

[SPECIFY]

Policies may be appended here which are relevant to

ANNEX B

Section A – Exclusive Services

1. Waste and Recycling
2. Greenspace (Gates and Barriers Inspections, Arboriculture, Playground Maintenance)
3. Streetcare, (Ground Maintenance, Street Cleansing)
4. Winter Maintenance
5. Highways Reactive; (inc Street Lighting Reactive, Signage Services)

Section B – First Refusal Services

6. Highways Planned; (inc Street Lighting Planned)

Section C – Other Services

7. Commercial Waste Collections *from Council Buildings* (Commercial Trade Waste & Skips)
8. Building Cleaning Services
9. Security (Security Control Room Services, Mobile Patrol Services, Static Guarding Services, Fire Alarm Services, Intruder Alarm Services)

Annex C

SolutionsSK Performance Indicators	Aim	Measurement	Reporting frequency
Corporate		Employees days lost through sickness	Monthly
Health & Safety	Reduce risk of accidents/injuries	No. of near misses reported	Monthly
		No. of Riddors	Monthly
Social Value		Apprentices in employment	Annually
Financial	Improve efficiency	Cost Savings and Productivity Improvements	Quarterly
		% of income from non Council sources	Quarterly
Environmental	Reduce energy and fuel consumption in the provision of the service	Litres of Fuel Used	Quarterly
Waste Collection	To minimise the numbers of complaints received	Service Failures per 100,000 collections (Black/Blue/Brown/Green)	Monthly
Street Cleansing	To improve the cleanliness of the borough	Relevant land and highways without unacceptable levels of deposits of litter (Grade A or B)	Thrice per annum
Greenspace	To improve appearance of the boroughs Parks and Greenspace	Relevant Greenspace without unacceptable levels of deposits of litter (Grade A or B) & Standard of Maintenance	Twice per annum
Highways	To be developed		
Estate & Asset Management	To be developed		