

DATED [ ] April 2023

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**DEED OF VARIATION  
TO THE AGREEMENT FOR  
THE PROVISION OF PUBLIC REALM SERVICES**

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**BETWEEN**

**THE MAYOR AND BURGESSES OF THE  
LONDON BOROUGH OF BRENT**

**and**

**VEOLIA ES (UK) LIMITED**

**THIS DEED OF VARIATION** is dated the [            ] day of [            ] 2023

**AND MADE BETWEEN:**

(1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BRENT** of Brent Civic Centre, Engineers Way, Wembley, Middlesex. HAG OFJ ("**the Authority**"); and

(2) **VEOLIA ES (UK) LIMITED** (Company Number 02481991), whose registered address is at 210 Pentonville Road, London, N1 9JY ("**the Contractor**")

individually "**Party**", together "**the Parties**".

**WHEREAS:**

- (A) The Authority and the Contractor entered into a contract dated 15th November 2013 together with certain subsequent variations (together "**the Agreement**") for the provision of Public Realm Services ("**the Services**") in accordance with the terms of the Agreement
- (B) The Services currently include waste collection, street cleansing and grounds maintenance services and the Agreement is due to expire on 31<sup>st</sup> March 2023
- (C) In respect of the replacement to the Services, due to commence on 1st April 2023, the Authority wishes to procure the grounds maintenance element of the Services ("**the GM Service**") separately from the collections and street cleansing elements. Due to unavoidable external causes, including the covid pandemic, the Authority is unable to complete the procurement of the replacement GM Service in sufficient time for it to commence on 1st April 2023
- (D) The conditions of the Public Contracts Regulations 2015 S72 (1) (c) have been satisfied and accordingly enable the Authority to modify the Agreement without a new procurement procedure by extending the current term of the GM Service by up to six months until 30th September 2023; and
- (E) The Parties have therefore agreed that, in the event (and only in the event) that the Contractor is awarded a contract commencing on 1st April 2023 which replaces the collections and street cleansing services under the Agreement, the provision of the current GM Service will be extended in accordance with the terms and conditions below ("**this Deed**" or "**Deed of Variation**").

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

**1) INTERPRETATION**

1.1 All terms defined in the Agreement shall have the same meaning when used in this Deed of Variation unless inconsistent with the context or otherwise defined in this Deed of Variation.

1.2 Except as otherwise expressly stated or provided herein, references in this Deed of Variation to Clauses, Schedules, Annexes and Paragraphs shall be to clauses, schedules, annexes and paragraphs of this Deed of Variation.

1.3 In the event of conflict or inconsistency between this Deed of Variation and the Agreement, this Deed of Variation shall take precedence over the Agreement in relation to the subject matter herein.

## 2) VARIATIONS TO THE AGREEMENT

2.1 The Agreement shall continue in full force and effect until its termination on 31st March 2023 subject only to the following variations:-

**Subject always to the Contractor being awarded a contract for the collections and street cleansing elements of the Service in substantially the form advertised in the UK Government Find a Tender Service, Notice reference 2021/S 000-027610, Published 3rd November 2021, then:-**

2.1.1 Following the expiry of the Public Realm Agreement on 31st March 2023 the Contractor shall continue to provide the GM Services only, as set out in the Agreement until 31<sup>st</sup> July 2023.

2.1.2 To the extent that the terms and conditions of a) the Agreement, and b) the associated Admission Agreement and Supplemental Agreement (both dated the 15<sup>th</sup> November 2013) are applicable or relevant to, respectively, the GM Services and the employees performing the GM Services, they shall continue to apply for the period provided at 2.1.1 above save that:-

a) the pricing and payment mechanism as set out in Schedule 3 of the Agreement shall cease to apply in its entirety and shall be replaced by Appendix 1 (Pricing and Payment) (to be included); and

b) the Contract Price shall be as defined in Appendix 1 (to be included); and

c) Sections C3, C5, C6 and C8 of the Agreement shall cease to apply; and

d) From 31<sup>st</sup> March 2023, Sections F7, F8, F9, F10 and Schedule 2 including the Performance Management Framework and Contract Targets, shall only apply in so far as they relate to the GM Service and no deductions shall be made to the Contract Price by the Authority except in respect of the Key Outcome Targets and, if applicable, the associated Performance Failure Points for the GM Service as set out in rows 10, 11, 12, 44 to 54 of Table 2 Annex 1 of Schedule 2 which shall apply subject to the following:-

i) no deductions shall be made in respect of the GM Service to the extent that any deductions or performance failure points arise as a result of the age and condition of the assets, vehicles and other equipment used by the Contractor to provide the GM Service subject to demonstration that all assets, vehicles and other equipment used by the Contractor have been maintained and serviced in accordance with original Public Realm Contract and relevant manufacturer's guidelines; and,

ii) any deductions made in respect of a failure to achieve the Key Outcome Targets for the GM Service shall be subject to a maximum amount of 2% of the Contract Price for the month in which they arise.

e) In Clause G2.1 (a) of the Agreement the figure of £5,000,000 shall be deleted and replaced with the figure £500,000.

f) The Parties hereby agree that all of the properties currently leased to the Contractor by the Authority under the terms of the Public Realm Agreement shall, subject to the provisions of clause 2.1.1, continue to be occupied by the Contractor until 31 July 2023 on the same terms and conditions as the existing leases.

## 3) SEVERABILITY

The provisions of this Deed are intended by the parties to be severable in the event that any part of it is held to be illegal or unenforceable (in whole or in part) and such part shall not affect the validity and enforceability of the remaining provisions or the remainder of the affected provision under this Deed.

**4) AUTHORITY AND COSTS**

Each party undertakes that it has full power and authority to enter into and shall be responsible for its own costs arising in relation to this Deed.

**5) THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

This Deed is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person who is not a party to this Deed. Accordingly, the parties confirm that no term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Deed.

**6) GOVERNING LAW AND JURISDICTION**

The parties agree that this Deed and any dispute arising under or in any way connected with the subject matter of this Deed (whether of a contractual or tortious nature or otherwise) shall be governed by and construed in accordance with the laws of England, and the parties submit to the jurisdiction of the English Courts.

**7) NO OTHER CHANGES**

All terms and conditions of the Contract (as varied during the Initial Period and the Extended Period) shall remain in full force and effect except to the extent that, a) they are varied by this Deed and b) they limit or prevent the intent or effect of the variations contained in this Deed.

**EXECUTED AS A DEED** by the parties or their authorised representatives the day and year first above written

**EXECUTED as a Deed** by affixing the )  
Common Seal of the Mayor & Burgesses of the )  
London Borough of Brent in the presence of )

.....  
Authorised Officer                      Signature

**EXECUTED as a Deed** and duly authorised )  
for and on behalf of Veolia ES (UK) Ltd )

.....  
Director                                      Signature

.....  
Director                                      Signature