

Standard Terms and Conditions for Consultancy Services (short form)

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1. INTERPRETATION

1.1 The terms and expressions used in these Standard Terms and Conditions shall have the meanings set out below: (unless the context requires otherwise).

Authorised Officer: the person duly appointed by the Council and notified in writing to the Consultant to act as the representative of the Council for the purpose of the Contract in the Contract Particulars or as amended from time-to-time and in default of such notification the Council's head of procurement or similar responsible officer.

Council Property: all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the business or affairs of the Council or its customers and business contacts, and any equipment, keys, hardware or software provided for the Consultant or the Individual's use by the Council during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Consultant or the Individual on the computer systems or other electronic equipment of the Council, the Consultant or the Individual during the Engagement.

Commencement Date: the commencement date stated in the Contract Particulars;

Commercially Sensitive Information: the information used in the Contract Particulars comprising the information of a commercially sensitive nature relating to the Consultant, its Intellectual Property Rights or its business or which the Consultant has indicated to the Council that, if disclosed by the Council, would cause the Consultant significant commercial disadvantage or material financial loss.

Confidential Information: information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of the Council for the time being confidential to the Council and trade secrets including, without limitation, technical data and know-how relating to the business of the Council or any of its suppliers, customers, agents, distributors, management or business contacts and including (but not limited to) information that the Consultant or the Individual creates, develops, receives or obtains in connection with this Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

Consultant: the person or organisation appointed by the Council to deliver the Services.

Contract: the agreement in respect of the provision of the Services consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority.

1. The Contract Particulars.

2. The Special Terms and Conditions.
3. The Standard Terms and Conditions.
4. The Tender except to the extent that any element of the Tender has been included in the Contract Particulars.

Contract Manager: the person named in the Contract Particulars as the Contract Manager and any replacement from time-to-time in accordance with clause 3.9.6.

Contract Particulars: the document detailing the specific core terms agreed between the parties with regard to the Services which shall include but not be limited to the Pricing Schedule, delivery instructions, Commencement Date, Authorised Officer, Contract Manager, key personnel, the Individual, Commercially Sensitive Information, Contract Period, and the Specification and relevant Contract specific details of the Tender included in the document.

Contract Period: the period of the Contract as set out in the Contract Particulars (and any extension in accordance with Clause 2.3

Data Controller: has the meaning set out in the Data Protection Legislation.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract

Data Processing Schedule: the schedule from the Tender detailing the data processing requirements.

Data Processor: Has the meaning set out in the Data Protection Legislation.

Data Protection Impact Assessment: An assessment by the controller of the impact of the envisaged processing on the protection of Personal Data.

Data Protection Legislation: means (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, The Data Protection Act 2018 and any associated regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018, and any other national laws, regulations or codes of practice relating to the protection of personal data.

Data Sharing Agreement: A formal agreement that documents what data is being shared and how the data can be used between the Parties.

Data Sharing Code of Practice: the code of practice issued by the Information Commissioner in respect to the sharing of personal data.

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Data Subject;	has the meaning set out in the Data Protection Legislation.
EIR:	The Environmental Information Regulations 2004.
Engagement:	the engagement of the Consultant by the Council on the terms of this Contract.
Fee:	the fee for the Services as set out in the Contract Particulars. Unless otherwise stated, any reference to price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.
FOIA:	The Freedom of Information Act 2000.
Individual:	the individual or individuals who will deliver the Services on behalf of the Consultant as named in the Contract Particulars.
Insurance Policies:	Employer's liability insurance cover, professional indemnity insurance cover and public liability insurance cover at the limits set out in the Contract Particulars.
Intellectual Property Rights:	patents, copyright and neighbouring and related rights, moral rights trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, 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 and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Invitation:	the Council's invitation to tender or quote for the Services.
Joint Data Controller;	has the meaning set out in the Data Protection Legislation.
LED;	Law Enforcement Directive (<i>Directive (EU) 2016/680</i>)
Personal Data:	Has the meaning set out in the Data Protection Legislation
Pricing Schedule:	the schedule from the Tender detailing the pricing as detailed in the Contract Particulars.
Protective Measures:	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
Services:	the services described in the Specification.

Special Terms and Conditions:	the additional terms and conditions attached which were set out in the Invitation.
Specification:	the specification included in the Invitation setting out the Council's detailed requirements in relation to the Services.
Sub-processor:	any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract.
Substitute:	a substitute for the Individual appointed under the terms of Clause 3.3
Tender:	the Consultant's tender for the Services in response to the Council's Invitation
Termination Date:	the date of termination of this Contract, howsoever arising.
VAT:	value added tax.
Works:	all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software programs, inventions, ideas, discoveries, developments, improvements or innovations and all materials embodying them in whatever form, including but not limited to hard copy and electronic form, prepared by the Consultant or the Individual in connection with the provision of the Services.

- 1.2 The headings in this Contract are inserted for convenience only and shall not affect its construction.
- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 The Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the Schedules.

2. TERM OF ENGAGEMENT

- 2.1 The Council shall engage the Consultant and the Consultant shall make available to the Council the Individual to provide the Services on the terms of this Contract.
- 2.2 The Engagement shall commence on the Commencement Date and subject to Clause 2.3 shall continue for the Contract Period.
- 2.3 If the Contract Period includes an option to extend and the Council intends to take up the option, the Consultant shall be notified in writing within the period stated in the Contract Particulars prior to the commencement of the extension. If no such notification is issued the Contract shall

automatically expire after the initial Contract Period.

3. DUTIES AND OBLIGATIONS

3.1 During the Engagement the Consultant shall, and (where appropriate) shall procure that the Individual shall:

3.1.1 provide the Services with all due care, skill and ability and use its or his best endeavours to promote the interests of the Council;

3.1.2 promptly give to the Council all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services or the business of the Council

3.2 If the Individual is unable to provide the Services due to illness or injury, the Consultant shall advise the Council of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in accordance with Clause 4 in respect of any period during which the Services are not provided.

3.3 The Consultant may, with the prior written approval of the Council and subject to the following proviso, appoint a suitably qualified and skilled Substitute to perform the Services instead of the Individual, provided that the Substitute shall be required to enter into direct undertakings with the Council, including with regard to confidentiality. If the Council accepts the Substitute, the Consultant shall continue to invoice the Council in accordance with Clause 4 and shall be responsible for the remuneration of the Substitute.

3.4 The Consultant shall use its reasonable endeavours to ensure that the Individual is available at all times on reasonable notice to provide such assistance or information as the Council may require.

3.5 Unless it or he has been specifically authorised to do so by the Council in writing:

3.5.1 neither the Consultant nor the Individual shall have any authority to incur any expenditure in the name of or for the account of the Council; and

3.5.2 the Consultant shall not, and shall procure that the Individual shall not, hold itself out as having authority to bind the Council.

3.6 The Consultant shall, and shall procure that the Individual shall, comply with all reasonable standards of safety and comply with the Council's health and safety procedures from time to time in force at the premises where the Services are provided and report to the Council any unsafe working conditions or practices.

3.7 The Consultant shall procure that the Individual shall comply with the Council's policies relevant to the Services (Relevant Policies).

3.8 The Consultant may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that:

3.8.1 the Council will not be liable to bear the cost of such functions; and

3.8.2 at the Council's request the third party shall be required to enter into direct undertakings

with the Council, including with regard to confidentiality.

3.9 The Consultant shall, and shall procure that the Individual shall:

- 3.9.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- 3.9.2 comply with the Council's Data Protection, Ethics and Anti-bribery and Anti-corruption Policies in each case as the Council may update them from time to time (**Relevant Policies**);
- 3.9.3 have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies and will enforce them where appropriate;
- 3.9.4 promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Consultant or the Individual in connection with the performance of this Contract;
- 3.9.5 ensure that all persons associated with the Consultant or other persons who are performing services in connection with this Contract comply with this Clause 3.9; and
- 3.9.6 inform the Council of their Contract Manager empowered to act on behalf of the Consultant for all purposes connected with the Contract. The Consultant shall give notice in writing to the Council at once of any change in the identity, address and telephone numbers of the person appointed as Contracts Manager. The Consultant shall give maximum possible notice to the Council before changing its Contract Manager.

3.10 The Consultant shall on request from the Council certify to the Council in writing signed by an officer of the Consultant, compliance with Clause 3.9. by the Consultant and all persons associated with it, including the Individual, and all other persons for whom the Consultant is responsible. The Consultant shall provide such supporting evidence of compliance as the Council may reasonably request. Failure to comply with Clause 3.9 may result in the immediate termination of this Contract.

4. FEES

- 4.1 The Council shall pay the Consultant the Fee as set out in the Pricing Schedule. The arrangements for payment of the Fee by the Council to the Consultant is set out in the Specification.
- 4.2 In consideration of the provision of the Services, the Council shall pay each invoice submitted by the Consultant in accordance with Clause 4.1, within 30 days of receipt.
- 4.3 The Council shall be entitled to deduct from the fees (and any other sums) due to the Consultant any sums that the Consultant or the Individual may owe to the Council at any time.
- 4.4 Payment in full or in part of the fees claimed under Clause 4 shall be without prejudice to any claims or rights of the Council against the Consultant or the Individual in respect of the provision of the Services.

4.5 The Council reserves the right to withhold payment of the relevant part of the Fee where the Consultant has either failed to provide the Services at all or has provided the Services inadequately and any invoice relating to such Services shall not be paid unless or until the Services have been performed to the Council's satisfaction.

5. MANAGEMENT FEE

5.1 Where the Contract Particulars so state, the Consultant shall pay the Council a management fee for all business received as listed in the Management Fee form. The level of this management fee and the method of payment are set out in the Contract Particulars.

6 OTHER ACTIVITIES

6.1 Nothing in this Contract shall prevent the Consultant or the Individual from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the Engagement provided that:

6.1.1 such activity does not cause a breach of any of the Consultant's obligations under this Contract;

6.1.2 the Consultant shall not, and shall procure that the Individual shall not, engage in any such activity if it relates to a business which is in any way competitive with the business of the Council without the prior written consent of the Council; and

6.1.3 the Consultant shall give priority to the provision of the Services to the Council over any other business activities undertaken by it during the course of the Engagement.

7. CONFIDENTIAL INFORMATION AND COUNCIL PROPERTY

7.1 The Consultant acknowledges that in the course of the Engagement it and the Individual will have access to Confidential Information. The Consultant has therefore agreed to accept the restrictions in this Clause 7.

7.2 The Consultant shall not, and shall procure that the Individual shall not (except in the proper course of its or his duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use its best endeavours to prevent the publication and disclosure of) any Confidential Information. This restriction does not apply to:

7.2.1 any use or disclosure authorised by the Council or required by law; or

7.2.2 any information which is already in, or comes into, the public domain otherwise than through the Consultant's or the Individual's unauthorised disclosure.

7.3 At any stage during the Engagement, the Consultant will promptly on request return to the Council all and any Council Property in its or the Individual's possession.

8. DATA PROTECTION

8.1 The Consultant shall procure that the Individual consents to the Council holding and processing data relating to him for legal, personnel, administrative and management purposes and in particular to the processing of any "special categories of personal data" (as defined in the Data

Protection Legislation) and criminal records data relating to the Individual including, as appropriate:

8.1.1 the Individual's racial or ethnic origin or religious or similar beliefs in order to monitor compliance with equal opportunities legislation;

8.1.2 information relating to any criminal proceedings in which the Individual has been involved for insurance purposes and in order to comply with legal requirements and obligations to third parties; and any other special categories of personal data to be processed as set out in the Specification.

8.2 The Consultant consents (and shall procure that the Individual consents) to the Council making such information available to those who provide products or services to the Council such as advisers, grant providers, regulatory authorities, governmental or quasi-governmental organisations and potential purchasers of the Council or any part of its business.

8.3 The Consultant shall comply, and shall procure that the Individual shall comply, with the Council's data protection policy and relevant obligations under the data protection legislation and associated codes of practice when processing personal data relating to any employee, worker, customer, Council supplier or agent of the Council.

8.4 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the data controller and the Consultant is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation) for any data collected by or provided to the Consultant in accordance with this Contract and that the attached Data Processing Schedule constitutes the data processing instructions and includes the scope, nature and purpose of processing by the Consultant, the duration of the processing and the types of personal data and categories of Data Subject.

8.5 In relation to any data for which the Consultant is acting as Data Processor on behalf of the Council, the Consultant shall:

8.5.1 Notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

8.5.2 provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:

- a) a systematic description of the envisaged processing operations and the purpose of the processing;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

8.5.3 process that Personal Data only in accordance with the Data Protection Schedule unless the Consultant is required to do otherwise by Law. If it is so required the Consultant shall promptly notify the Council before processing the Personal Data unless prohibited by Law;

8.5.4 ensure that it has in place Protective Measures, which are appropriate to protect against

- a Data Loss Event, which the Council may reasonably reject (but failure to reject shall not amount to approval by the Council of the adequacy of the Protective Measures) having taken account of the:
- a) nature of the data to be protected;
 - b) harm that might result from a Data Loss Event;
 - c) state of technological development; and
 - d) cost of implementing any measures;
- 8.5.5 ensure that the Consultant Personnel or the Individual do not process Personal Data except in accordance with this Agreement (and in particular the Data Processing Schedule)
- 8.5.6 ensure it takes all reasonable steps to ensure the reliability and integrity of any personnel or staff who have access to the Personal Data and ensure that they:
- a) are aware of and comply with the Consultant's duties under this clause;
 - b) are subject to appropriate confidentiality undertakings with the Consultant or any Sub-processor;
 - c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and
 - d) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 8.5.7 not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
- a) the Council or the Consultant has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or Law Enforcement Directive Article 37) as determined by the Council;
 - b) the Data Subject has enforceable rights and effective legal remedies;
 - c) the Consultant complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
 - d) the Consultant complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- 8.5.8 At the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Consultant is required by Law to retain the Personal Data.
- 8.5.9 shall notify the Council immediately if it:
- a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - b) receives a request to rectify, block or erase any Personal Data;
 - c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract

- e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - f) becomes aware of a Data Loss Event.
- 8.5.10 The Consultant's obligation to notify under clause 8.5.9 shall include the provision of further information to the Council in phases as details become available.
- 8.5.11 Taking into account the nature of the processing, the Consultant shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under such legislation (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
- a) full details and copies of the complaint, communication or request;
 - b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - d) assistance as requested by the Council following any Data Loss Event;
 - e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- 8.5.12 The Consultant shall maintain complete and accurate records and information to demonstrate its compliance with this clause 8.5
- 8.5.13 The Consultant shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 8.5.14 The Consultant shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 8.5.15 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Consultant must:
- a) notify the Council in writing of the intended Sub-processor and processing;
 - b) obtain the written consent of the Council;
 - c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 8.5 such that they apply to the Sub-processor; and
 - d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 8.5.16 The Consultant shall remain fully liable for all acts or omissions of any Sub-processor.
- 8.5.17 The Council may, at any time on not less than 30 Working Days' notice, revise any part of this clause 8.5 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 8.5.18 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the

9. FREEDOM OF INFORMATION

- 9.1 The Council is subject to the FOIA and the EIR ("the Acts"). As part of the Council's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts.
- 9.2 The Consultant shall assist and cooperate with the Council (at the Consultant's expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.
- 9.3 If the Consultant considers that any of the information provided by the Consultant under the Contract or as part of the procurement process is commercially sensitive (meaning it could reasonably cause prejudice to the organisation if disclosed to a third party) then it shall notify the Council and provide valid reasons in support of the information being exempt from disclosure under the Act and the EIR.
- 9.4 The Council will have regard to any such notification and reasons given by the Consultant before it releases any information to a third party under the Act or the EIR. However the Council shall be entitled to determine in its absolute discretion whether any information is exempt from the Act and/or the EIR, or is to be disclosed in response to a request of information. The Council must make its decision on disclosure in accordance with the provisions of the Act or the EIR and can only withhold information if it is covered by an exemption from disclosure under the Act or the EIR.
- 9.5 The Council will not be held liable for any loss or prejudice caused by the disclosure of information that:
- 9.5.1 has not been notified to the Council as being commercially sensitive with supporting reasons (referring to the relevant category of exemption under the Act or EIR where possible); or
 - 9.5.2 does not fall into a category of information that is exempt from disclosure under the Act or EIR (for example, a trade secret or would be likely to prejudice the commercial interests of any person); or
 - 9.5.3 in cases where there is no absolute statutory duty to withhold information, then notwithstanding the previous clauses, in circumstances where it is in the public interest to disclose any such information.

10. TRANSPARENCY

- 10.1 In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Council is required to publish information on its website detailing any item of expenditure over £500, and any contract with a value that exceeds £5,000. The information published will include the Consultant's details and the Price to be paid. The parties acknowledge that this information is not Confidential Information or Commercially Sensitive Information.
- 10.2 The parties acknowledge that, except for any information which is exempt from disclosures in

accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information or Commercially Sensitive Information. The Council shall be responsible for determining at its absolute discretion whether any of the content of the Contract is for disclosure in accordance with the FOIA. Notwithstanding any other term of this Contract, the Consultant hereby gives his consent for the Council to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

11. INTELLECTUAL PROPERTY

11.1 The Consultant warrants to the Council that it has obtained from the Individual a written and valid assignment of all existing and future Intellectual Property Rights in the Works and of all materials embodying such rights and a written irrevocable waiver of all the Individual's statutory moral rights in the Works, to the fullest extent permissible by law, and that the Individual has agreed to hold on trust for the Consultant any such rights in which the legal title has not passed (or will not pass) to the Consultant. The Consultant agrees to provide to the Council a copy of this assignment on or before the date of this Contract.

11.2 The Consultant hereby assigns to the Council all existing and future Intellectual Property Rights in the Works and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this Contract, the Consultant holds legal title in these rights and inventions on trust for the Council.

11.3 The Consultant undertakes to the Council:

11.3.1 whenever requested to do so by the Council and in any event on the termination of the Engagement, promptly to deliver to the Council all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Works and the process of their creation which are in its or the Individual's possession, custody or power;

11.3.2 not to register nor attempt to register any of the Intellectual Property Rights in the Works unless requested to do so by the Council; and

11.3.3 to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the Works has passed, or will pass, to the Council, and confirms that the Individual has given written undertakings in the same terms to the Consultant.

11.4 The Consultant warrants that:

11.4.1 it has not given and will not give permission to any third party to use any of the Works, nor any of the Intellectual Property Rights in the Works;

11.4.2 it is unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and

11.4.3 the use of the Works or the Intellectual Property Rights in the Works by the Council will not infringe the rights of any third party,

and confirms that the Individual has given written undertakings in the same terms to the Consultant.

- 11.5 The Consultant agrees to indemnify the Council and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Council, or for which the Council may become liable, with respect to any intellectual property infringement claim or other claim relating to the Works supplied by the Consultant to the Council during the course of providing the Services. The Consultant shall maintain adequate liability insurance coverage and ensure that the Council's interest is noted on the policy, and shall supply a copy of the policy to the Council on request. The Council may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Consultant.
- 11.6 The Consultant undertakes to execute all documents, make all applications, give all assistance and do all acts and things, at the expense of the Consultant and at any time either during or after the Engagement, as may, in the opinion of the Council, be necessary or desirable to vest the Intellectual Property Rights in, and register or obtain patents or registered designs in, the name of the Council and to defend the Council against claims that works embodying Intellectual Property Rights infringe third party rights, and otherwise to protect and maintain the Intellectual Property Rights in the Works. The Consultant confirms that the Individual has given written undertakings in the same terms to the Consultant.
- 11.7 The Consultant irrevocably appoints the Council to be its attorney in its name and on its behalf to execute documents, use the Consultant's name and do all things which are necessary or desirable for the Council to obtain for itself or its nominee the full benefit of this clause.

12. INSURANCE AND LIABILITY

- 12.1 The Consultant shall have liability for and shall indemnify the Council for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Consultant or the Individual or any Substitute engaged by it of the terms of this Contract including any negligent or reckless act, omission or default in the provision of the Services and shall accordingly maintain in force during the Engagement full and comprehensive Insurance Policies.
- 12.2 The Consultant shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to the Council and that the level of cover and other terms of insurance are acceptable to and agreed by the Council.
- 12.3 The Consultant shall on request supply to the Council copies of the Insurance Policies and evidence that the relevant premiums have been paid.
- 12.4 The Consultant shall comply (and shall procure that the Individual complies) with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Consultant is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Consultant shall notify the Council without delay.

13. TERMINATION

- 13.1 The Council may terminate the Engagement with immediate effect without notice and without any liability to make any further payment to the Consultant (other than in respect of amounts accrued before the Termination Date) if at any time:
- 13.1.1 the Consultant or the Individual commits any gross misconduct affecting the business of the Council;

- 13.1.2 the Consultant or the Individual commits any serious or repeated breach or non-observance of any of the provisions of this Contract or refuses or neglects to comply with any reasonable and lawful directions of the Council;
 - 13.1.3 the Individual is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed); or
 - 13.1.4 the Consultant or the Individual is, in the reasonable opinion of the Council, negligent or incompetent in the performance of the Services;
 - 13.1.5 the Consultant becomes bankrupt, insolvent, or makes arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding-up order is made or an administrator or receiver is appointed in relation to the Consultant;
 - 13.1.6 the Consultant or the Individual commits any fraud or dishonesty or acts in any manner which in the opinion of the Council brings or is likely to bring the Individual, the Consultant or the Council into disrepute or is materially adverse to the interests of the Council;
 - 13.1.7 the Consultant or the Individual commits any breach of the Council's policies and procedures; or
 - 13.1.8 the Consultant or the Individual commits any offence under the Bribery Act 2010.
- 13.2 The rights of the Council under clause 13.1 are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this Contract on the part of the Consultant as having brought the Contract to an end. Any delay by the Council in exercising its rights to terminate shall not constitute a waiver of these rights.
- 13.3 The Council reserves the right to terminate the Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances. On termination under this Clause 13.3 the Council will pay the Consultant for the Services delivered up to the date of termination.

14. OBLIGATIONS ON TERMINATION

- 14.1 On the Termination Date the Consultant shall, and shall procure that the Individual shall:
- 14.1.1. immediately deliver to the Council all Council Property and original Confidential Information which is in its or his possession or under its or his control;
 - 14.1.2 Irretrievably delete any information relating to the Business of the Council stored on any magnetic or optical disk or memory and all matter derived from such sources which is in its or his possession or under its or his control outside the premises of the Council. For the avoidance of doubt, the contact details of business contacts made during the Engagement are regarded as Confidential Information, and as such, must be deleted from personal social or professional networking accounts; and
 - 14.1.3 provide a signed statement that it or he has complied fully with its or his obligations under this Clause 14, together with such evidence of compliance as the Council may reasonably request.

15. STATUS

- 15.1 The relationship of the Consultant (and the Individual) to the Council will be that of independent contractor and nothing in this Contract shall render it (nor the Individual) an employee, worker, agent or partner of the Council and the Consultant shall not hold itself out as such and shall procure that the Individual shall not hold himself out as such.
- 15.2 This Contract constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant shall be fully responsible for and shall indemnify the Council for and in respect of:
- 15.2.1 any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the Individual in respect of the Services, where such recovery is not prohibited by law. The Consultant shall further indemnify the Council against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Council in connection with or in consequence of any such liability, deduction, contribution, assessment or claim
- 15.2.2 any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Individual or any Substitute against the Council arising out of or in connection with the provision of the Services.
- 15.3 The Council may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Consultant.
- 15.4 The Council reserves the right in relation to the Consultant to carry out H.M. Revenue and Customs' ("HMRC") PAYE status test and, in accordance with HMRC Guidance, to deduct from the Fee and pay to HMRC such sums in respect of tax and National Insurance as it may be required to deduct and pay in accordance with that HMRC Guidance.

16. NOTICES

- 16.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);
- 16.2 Any notice or communication shall be deemed to have been received:
- 16.2.1 if delivered by hand, on signature of a delivery receipt [or at the time the notice is left at the proper address;
- 16.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service, whichever is the latter;
- 16.3 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.

16.4 A notice given under this Contract is not valid if sent by e-mail.

17. DISPUTE RESOLUTION

17.1 If a dispute arises between the Council and the Consultant in connection with the Contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.

17.2 If a dispute is not resolved within 14 days of referral under clause 17.1 then either party may refer it to the chief executive or appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.

17.3 Provided that both parties consent, a dispute not resolved in accordance with clauses 17.1 and 17.2 shall next be referred at the request of either party to a mediator appointed by agreement between the parties. This must be within 14 days of one party requesting mediation with the costs of mediation determined by the mediator.

17.4 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

18. ASSIGNMENT, SUBCONTRACTING AND RESPONSIBILITY

18.1 Subject to any express provision of this Contract, the Consultant shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or subcontract the provision of the Services.

18.2 The Consultant shall identify each part of the Services that it intends to sub-contract and the proposed sub-contractor for each item identified prior to seeking the Council's consent to such sub-contracting. .

18.3 The Council shall be entitled to impose conditions in relation to any consent to sub-contracting.

18.4 The Consultant shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and employees as though they were its own

18.5 The Council shall be entitled to:

18.5.1 assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any other public sector body or contracting authority defined under the Public Contracts Regulations 2015

18.5.2 transfer, assign or novate its rights and obligations where required by law.

19. FORCE MAJEURE

19.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 2 months the Party not affected may terminate this Contract by giving 14 written notice to the affected party.

20. ENTIRE AGREEMENT

- 20.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 20.2 Each party acknowledges that in entering into this Contract it does not rely on, and 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 Contract.
- 20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this Contract.
- 20.4 Nothing in this clause shall limit or exclude any liability for fraud.

21. VARIATION

- 21.1 No variation of this Contract or of any of the documents referred to in it shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

22. THIRD PARTY RIGHTS

- 22.1 A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.
- 22.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other person.

23. GOVERNING LAW

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

24. JURISDICTION

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