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**MELTON BOROUGH COUNCIL**

**TENDER FOR CONSULTANCY:**

**EXTRA CARE FACILITY FEASIBILTY REVIEW**

**WITH AN OPTION TO EXTEND TO PROJECT MANAGEMENT**

**TENDER DOCUMENT THREE (3)**

**TERMS AND CONDITIONS**

**THIS AGREEMENT** is made on the [date]

**BETWEEN:-**

(1) MELTON BOROUGH COUNCIL of Parkside, Station Approach, Burton Street, Melton Mowbray, Leicestershire LE13 1GH, ("**the Client**"), and

(2) (Company Registration Number:), whose registered office is, xxxxxxxxxxxxxxxxxx ("**the Consultant**")

**RECITALS:-**

A. The Client wishes on the terms and conditions set out in this Agreement to appoint the Consultant to provide professional services in relation to provision of an Extra Care Facility Feasibility Review for the Communities and Neighbourhoods and other Departments of the Client.

1. The said services ("**the Services**") are more particularly described in the brief issued to the Consultant by the Client and set out in Part I of the First Schedule hereto ("**the Brief**").

C. The Consultant has submitted to the Client its proposal as set out in Part II of the First Schedule hereto including the Consultant’s programme ("**the Proposal**").

D. The Services shall be deemed to include such other services as may be required by the Client which are reasonably incidental to those set out in the Brief and the Proposal.

E. The Client has relied and will continue to rely upon the skill and judgement of the Consultant in respect of all matters covered by this Agreement.

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

1 APPOINTMENT AND SERVICES

1.1 The Client hereby appoints the Consultant and the Consultant hereby agrees to carry out and complete the Services in accordance with the terms and conditions set out in this Agreement.

1.2 The appointment of the Consultant shall be deemed to have commenced with effect from the date upon which the Consultant shall have begun to perform the Services. The commencement date of the agreement shall be [date]

1.3 The Services shall be as described in the Brief and the Proposal PROVIDED THAT in the event of any conflict or discrepancy between the Brief and the Proposal the Brief shall prevail except where the Proposal adds to the Brief in which respects the Proposal shall prevail and provided further that in the event of any conflict or discrepancy between this Agreement and the Brief and/or the Proposal this Agreement shall prevail.

1.4 The Client does not guarantee or warrant the accuracy or completeness of any background information, volume or statistic provided. The Consultant shall be deemed to have made all necessary investigations and to have satisfied itself of all facts, statistics, information or data on which the Services are based.

1.5 Where the Consultant provides any result, finding, data, outcome, analysis or interpretation to the Client as part of the Services and such is based or reliant on any matter which the Consultant has not ascertained, studied, surveyed, inspected or compiled itself, the Consultant shall confirm that it has verified the matter itself.

 2. OBLIGATION OF CONSULTANT

2.1 The Consultant warrants to the Client that in the performance of the Services and in regard to all documents prepared by the Consultant and all information provided by the Consultant in connection with the Services it has exercised and will continue to exercise all the reasonable skill care and diligence to be expected of a properly qualified Consultant experienced in carrying out services of the kind envisaged by the Brief. No enquiry inspection approval sanction comment consent or decision at any time made or given by or on behalf of the Client or any other party in relation to any such document or information and no failure of the Client or any other party to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligation of the Consultant to exercise all the skill care and diligence required by this Clause.

2.2 The Consultant shall not at any time during its appointment under this Agreement knowingly act in any capacity for any person or persons firm or company in circumstances where a conflict of interest between such person or persons firm or company and the Client shall thereby exist.

2.3 The Consultant shall not without the prior written consent of the Client accept give or offer any trade commission discount allowance direct or indirect payment or other consideration from or to any third party contrary to the provisions of the Bribery Act 2010 in connection with the Services.

2.4 The Consultant shall provide to the satisfaction of the Client such appropriately qualified and experienced professional technical and clerical staff as shall be necessary for the proper performance of the Services including without limitation those persons specified in the Proposal and shall not remove or replace such persons without the prior written approval of the Client.

2.5 The Client shall have the right after consultation with the Consultant to request the removal from involvement in the Services of any person engaged in the performance of the Services if in its reasonable opinion the performance or conduct of such person is or has been unsatisfactory.

2.6 The Consultant warrants it has read and fully understood the Brief and that the Consultant is capable of performing the Services and has all necessary staff equipment and experience for this purpose.

2.7 The Consultant shall comply with all reasonable instructions given to it by the Client in relation to the Services.

2.8 The Consultant shall ensure in performing the Services that its employees any sub- contractors and any other persons acting on its behalf adopt safe methods of work in order to protect the health and safety of:-

 2.8.1 the employees of the Consultant

 2.8.2 the employees of the Client

 2.8.3 the employees of any sub-contractor or other person working on behalf of the Consultant

 2.8.4 the residents of the dwellings

 2.8.5 any other persons including but without limitation members of the public.

2.9 The Client and the Consultant shall review the Brief shortly after the contract begins and shall consider whether amendments should be made to the Brief to improve the accuracy or completeness of the brief or to improve the Services. The Consultant shall put into effect any amendments agreed or instructed by the Client as a result of this process.

2.10 If the Consultant shall find it necessary to use the services of a third party whether for information or for the supply of goods or services the shall in except in matters of a minor and obvious nature obtain the prior written consent of the client before using such service.

2.11 The Consultant shall use its best endeavours to promote the interest of the Client and to ensure that the services are carried out in such a manner as to cause as little inconvenience, disturbance or damage as is reasonably possible.

2.12 The Consultant shall ensure that it and its personnel comply with all applicable laws, legislation, statues, codes of practice, authorisation, conditions, requirements of regulatory authorities and all lawful requirements of the client.

2.13 The Consultant shall ensure that it obtains and complies with the full requirements of any authorisation or consent as may be necessary in connection with the performance of the Services.

 3 PROGRAMME

3.1 The Consultant shall regularly and diligently perform and use its reasonable endeavours to complete the Services in accordance with the programme set out in the Third Schedule hereto.

3.2 If the Consultant fails to complete the Services by the date for completion stated in the Third Schedule then unless such failure is wholly due to events beyond its control the Client shall without prejudice to any other remedy for breach of contract be at liberty to determine the contract either wholly or to the extent of such default and to purchase professional services of a similar nature to achieve and complete the survey and presentation of analysis. Any costs incurred by the Client which exceed the amount which would have been payable to the Consultant had the default or breach of contract not occurred shall be recoverable from the Consultant.

3.3 Termination of the Consultant’s appointment under this Agreement shall be without prejudice to the rights and remedies of either party in respect of any antecedent breach.

 4 FEES

4.1 The fees payable to the Consultant in respect of the proper performance of the Services ("the Fees") shall be calculated and paid by the Client against invoices received in accordance with the provisions set out in the Second Schedule

4.2 Save as hereinafter specifically otherwise provided the Fees are inclusive of all costs expenses and disbursements incurred by the Consultant arising out of or in connection with the full and proper performance and completion of the Services.

4.3 The Fees and other sums due from the Client to the Consultant hereunder are exclusive of value added tax which shall be paid by the Client (where chargeable) at the standard rate.

4.4 All sums properly payable to the Consultant under this Agreement shall be paid by the Client within 28 days of receipt of an invoice setting out sums due.

4.5 Payment by the Client shall be without prejudice to any claims or rights which the Client may have made against the Consultant and shall not constitute any admission by the Client as to the performance by the Consultant of its obligations hereunder. Prior to making any such payment, the Client shall be entitled to make deduction or deferment of payment in respect of any disputes or claims whatsoever with or against the Consultant.

5 ADDITIONAL SERVICES

5.1 The Client may at any time request the performance by the Consultant of additional services which the Consultant shall duly perform in accordance with the terms of this Agreement save that the Client and the Consultant shall agree a programme and a completion date for such additional services in writing in advance (and failing such agreement the programme and the completion date shall be determined on the application of either party by adjudication under Clause) and the Consultant shall be entitled to be paid an additional fee based on the rates set out in the Proposal. In the event that the rates are not applicable then the Consultant shall be entitled to be reimbursed at such rates as shall be fair and reasonable in all the circumstances. All other provisions of this Agreement shall apply to such additional services mutatis mutandis the original Services.

5.2 The above additional services shall not include the correction or re-execution of all or any part of the Services in the event that such correction or re-execution is required by the Client as a result of the default of the Consultant or any member of its staff and in such circumstances the Consultant shall forthwith undertake such correction or re-execution at no additional cost to the Client.

6 INDEMNITY INSURANCE

6.1 The Consultant expressly acknowledges the reliance (as described in the Brief) that the Client will place on the Services and:-

6.2 the Consultant shall be liable for and shall indemnify and keep indemnified the Client against all and any losses suffered or incurred by the Client and claims made against the Client or the Consultant arising from any defect, incorrect statement or omission contained in any report or other information whether written or verbal supplied to the Client by the Consultant in the performance of the Services;

6.3 the Consultant shall further indemnify and keep indemnified the Client against all and any losses suffered or incurred by the Client and any claims made against the Client or the Consultant in respect of personal injury to or death of any person whomsoever (including without limitation any employee of the Client or the Consultant) and in respect of damage to or loss of any property or third party whatsoever and howsoever caused by or arising out of or in the course of the performance of the Services.

6.4 Without prejudice to the Consultant’s obligations the Consultant shall take out and maintain for a period of six (6) years from the date of completion of the Services insurance with the following limits of indemnity (where such are stipulated) for any one occurrence or series of occurrences arising out of any one event subject to such insurance being available in the market to professional Consultants experienced in carrying out services of the kind envisaged by the Brief:-

 6.4.1 Employers liability insurance in respect of the Consultant’s employees in compliance with the Employers’ Liability (Compulsory Insurance) Act 1969 and any Order thereunder or amendment thereto;

 6.4.2 Professional indemnity insurance covering the Consultant’s liability hereunder and including inter alia any negligence, omission or default on the Consultant’s part, its sub-contractors and their respective employees for a limit of indemnity of not less than £2 million for each and every claim. Insurance cover shall be maintained for a period of six (6) years following the date of delivery of the final report and annually renewed;

 6.4.3 Public liability insurance in respect of any liability damage loss expense cost claim or proceedings in respect of personal injury to or death of any person (including without limitation any employee of the Client or the Consultant) or injury or damage to any property or third party arising out of or in connection with the performance of the Services for a limit of indemnity of not less than £5 million for each and every claim.

 Such insurances shall be with a well-established insurance office or underwriter of repute. As and when required so to do by the Client the Consultant shall produce for inspection documentary evidence that the insurance so required is properly maintained. If for any period any such insurances are not available at reasonable commercial rates the Consultant shall forthwith inform the Client and shall obtain in respect of such period such reduced level of insurance as is available and as would be fair and reasonable in the circumstances for the Consultant to obtain.

6.5 The Consultant shall immediately upon receipt thereof notify each insurer or underwriter of the insurances referred to in Clause of any claim made against it under this Agreement.

6.6 If so required by notice in writing from the Client the Consultant shall within five (5) working days of any such notice and without requiring any further fee execute and deliver to such party deeds of warranty in the form set out in the Fourth Schedule hereto in favour of such party as the Client shall notify to the consultant and the Consultant shall not be entitled to any further Fees until the deeds the subject of the aforesaid notice have been received by the Client duly executed by the Consultant.

 7 OWNERSHIP OF DOCUMENTS AND COPYRIGHT

7.1 The copyright in any drawings reports plans computer data and other documents and information provided by the Consultant in connection with Services ("**the Documents**") shall remain vested in the Consultant but the Client and any person authorised by the Client shall have an irrevocable royalty-free non-exclusive licence to copy and use the Documents for any purpose PROVIDED THAT such Documents shall not be used by any third party for any purpose other than that for which they were originally prepared. Such licence shall also carry the right to grant sub-licences and shall be transferable to third parties PROVIDED ALWAYS that ownership of all such documents prepared or in the course of preparation will immediately and automatically pass to the Client in the event of the Consultant’s insolvency or in the event of the appointment of a receiver or any officer or agent appointed to administer all or any of the Consultant’s assets so as to deal with any actual or potential insolvency of the Consultant or on termination of the Consultant’s appointment under this Agreement or in the event of any breach by the Consultant of any of the terms of this Agreement whichever shall be the earlier.

7.2 For this purpose the Consultant shall provide at the expense of the Client such further copies of the Documents as the Client may reasonably require provided always that the Client may at its own expense make such further copies of the Documents as it may require without further payment to the Consultant.

7.3 The Client shall have the right in regard to the Documents to add its name thereto but so that in doing so it shall not obscure or render illegible any of the existing names notes designations or other writings thereon and shall make no other changes or alterations thereto.

 8 TERMINATION AND POSTPONEMENT

8.1 The appointment of the Consultant may be terminated by the Client by written notice with immediate effect in the event that the Client for any reason decides so to do and in such event the Client shall pay to the Consultant a reasonable proportion of the Fees based on the Services already performed by the Consultant prior to the date of such notice. For the avoidance of doubt the Consultant shall not be entitled to any costs, loss and/or expense, loss of profit or contracts or other monies whether arising under this Agreement or otherwise.

8.2 If within twelve (12) months following the date of termination under Clause 8.1 above the Consultant is instructed to resume the Services then subject to Clause 8.3 below the Consultant shall comply with such instruction and any Fees paid under Clause 8.1 above shall be treated as payments on account towards the total Fees payable under the terms of this Agreement.

8.3 If the Consultant is instructed to resume the Services more than twelve (12) months following the date of termination under Clause 8.1 above or if such instruction is given within such twelve (12) month period but the project in respect of which the Services are required to be provided is substantially different from the subject of the Brief and the Proposal the Consultant shall comply with such instructions and any Fees paid to the Consultant under Clause 8.1 above shall be regarded as final payment for the original Services actually provided, and the revised services to be provided and the revised fees payable shall be agreed by reference wherever possible to the Brief and the Proposal and failing agreement to be determined on the application of either party by adjudication under Clause 14.

8.4 The Client may terminate the appointment of the Consultant hereunder by written notice with immediate effect and without prejudice to the Client’s other rights and remedies if at any time the Consultant goes into liquidation or administrative receivership or if at any time the Consultant commits a breach of any term of this Agreement which is incapable of remedy or is not remedied within seven (7) days from the date of a notice in writing specifying such breach.

8.5 The Client may terminate the appointment of the Consultant with immediate effect and recover any resulting losses from the Consultant if the Consultants and its employees or agents with or without its knowledge:

(i) improperly offers or gives anyone anything in order to influence the way in which any contract or agreement with the Client is given completed or carried out or;

(ii) commits any offence under the Bribery Act 2010 or section 117(2) of the Local Government Act 1972.

8.6 Upon any termination of the appointment of the Consultant the Consultant shall deliver to the Client all the Documents (whether in the course of preparation or completed).

8.7 Termination or postponement of the Consultant’s appointment shall be without prejudice to the rights and remedies of either party in respect of any antecedent breach.

 9 ASSIGNMENT AND THIRD PARTIES

9.1 The Consultant shall not assign or transfer any benefit, duty or obligation under this Agreement or any right or remedy available to it hereunder.

9.2 The Consultant shall not sub-contact allow any other person to perform any of the Services without the Client’s prior written consent. Any such sub-contracting shall not in any way relieve the Consultant from its liabilities hereunder and the Consultant shall be and shall remain fully responsible in respect of the Services notwithstanding such sub-contracting.

9.3 The Consultant shall ensure that if the Client so requires any sub-contractor appointed by the Consultant to perform any part of the Services provides a collateral warranty in relation to such part of the Services in favour of the Client or any third party nominated by the Client on terms which are no less favourable to the Client, or third party than the terms of the equivalent collateral warranty being obtained from the Consultant pursuant to Clause 6.4. The Consultant shall ensure that in such event the Client is forthwith supplied with a copy of the terms and conditions of engagement of the relevant sub-contractor and further that the relevant sub-contractor shall before the execution and delivery of any such warranty give a copy of the form of warranty to its professional indemnity insurers or underwriters.

 10 CONFIDENTIALITY

All information set out or referred to in this Agreement or in the Brief and all further information and documents provided to the Consultant at any time in connection with the Services and all documents prepared by the Consultant in connection with the Services are and shall be strictly private and confidential and the Consultant shall not (and shall ensure that its employees do not) disclose or hand over any such information or documents to any third party without the prior written consent of the Client. All such information and documents shall be kept secret by the Consultant and shall be used only for the performance of the Services.

**11 GENERAL**

11.1 The Consultant will note the Client’s current and future obligations under the Data Protection Act 1998 Freedom of Information Act 2000 Human Rights Act 1998 Disability Discrimination Act 1995 and Race Relations Act 1976 (all as amended from time to time by any codes of practice and best practice guidance issued by the Government and the appropriate enforcement agencies).

11.2 The Consultant will comply with the above legislation in so far as it places obligations upon the Consultant in performance of its obligations under this Agreement.

11.3 The Consultant will facilitate the Client’s compliance with the Client’s obligations under these provisions and comply with any reasonable request from the Client for that purpose.

12 ALTERATION TO TERMS

12.1 All additions amendments and variations to the terms of this Agreement shall be binding only if set out in writing and signed by the duly authorised representatives of the parties.

12.2 This Agreement supersedes any other previous contracts agreements appointments or arrangements between the parties in respect of the Services whether oral or written.

13 NOTICES

Any notice to be given under the terms of this Agreement shall be properly served by sending the same by recorded delivery post or facsimile to the following addresses and facsimile numbers of the parties hereto:

The Client:-

Solicitor to the Council,

Melton Borough Council,

Parkside,

Station Approach,

Burton Street,

Melton Mowbray,

Leicestershire LE13 1GH

The parties hereto shall promptly notify one another of any change of address or facsimile number.

14. DISPUTE RESOLUTION AND APPLICABLE LAW

14.1 Any dispute or difference arising out of or in connection with this Agreement shall be referable at the option of either party to adjudication.

14.2 This Agreement shall be subject to the laws of England and (subject to Clause 14.1) the Courts of England shall have jurisdiction to determine all differences or disputes of whatever nature arising under or in connection with this Agreement.

**15. CLAUSE HEADINGS**

The clause headings set out in this Agreement are provided for the purpose of reference only.

**16. EQUALITY ACT 2010**

The Consultant shall comply with all of the Client’s policies and rules that have been notified to it such as but not limited to equality and diversity policies, sustainability, information security rules, whistleblowing and/or confidential reporting policies; and all site rules relevant to the fulfilment of the Consultant’s obligations in the performance of the Services.

The Consultant shall not unlawfully either directly or indirectly discriminate, victimise or harass within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether due to race, colour, ethnic or national origin, social background, disability, gender, transgender, sexual orientation, religion, belief, age or marital status) in employment. The Consultant shall comply with all relevant legislation relating to its employees however employed including (but not limited to) the compliance in law of the ability of the employees to work in the United Kingdom. If the Consultant has a finding against it relating to its obligations under this clause it will provide the Client with details of the finding and the steps the Consultant has taken to remedy the situation.

**AGREED BY THE PARTIES THROUGH THEIR AUTHORISED SIGNATURES**

**SIGNED FOR AND ON BEHALF OF THE CLIENT**

**MELTON BOROUGH COUNCIL (Authorised Signatory)**

**Signed:**

**Name:**

**Title:**

**Date:**

**SIGNED FOR AND ON BEHALF OF**

**The Consultant**

 **(Authorised Signatory)**

**Signed:**

**Name:**

**Title:**

**Date:**

**THE FIRST SCHEDULE**

**PART I**

**The Brief**

**THE FIRST SCHEDULE**

**PART II**

**The Proposal**

**THE SECOND SCHEDULE**

**The Fees**

**THE THIRD SCHEDULE**

**The Consultant’s Programme**