

Dated

2019

KETTERING BOROUGH COUNCIL

-AND-

[XXX]

PROFESSIONAL SERVICES AGREEMENT
IN RELATION TO
LEISURE OPTIONS APPRAISAL

District Law
Municipal Offices
Bowling Green Road
Kettering
Northamptonshire
NN15 7QX

Ref: GXS/0[XXX]

THIS AGREEMENT is made []

BETWEEN

(1) **KETTERING BOROUGH COUNCIL** of Municipal Offices, Bowling Green Road, Kettering, NN15 7QX (the “Client”); and

(2) **[XXX] (Company Registration No [XXX])** whose offices are at **[XXX] (the “Consultant”)**.

BACKGROUND:

- (A) In reliance upon the skill, knowledge and experience the Consultant has represented that it has, the Client wishes to appoint the Consultant to provide the Services.
- (B) The Consultant agrees to accept the appointment in accordance with the terms and conditions of this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the context otherwise requires the definitions set out below shall apply.

“Agreement” this professional services agreement, its terms and conditions, the schedule and any other document attached;

“Best Industry Practice” standards, practices, methods and procedures conforming to the Laws and with all due care, skill, diligence and ability which would be expected from a skilled and appropriately experienced, qualified and trained person or body engaged in a similar type of undertaking under the same or similar circumstances;

“Commencement Date” 3rd December 2019;

“Confidential Information” all information disclosed by one party to the other, orally in writing or in electronic form relating to this Agreement that is not already in the public domain. It shall also include information, documents, drawings, reports or data the Consultant may acquire or generate under or in connection with this Agreement;

“Consultant’s Representative” the representative appointed by the Consultant in relation to this Agreement, whose details are set out in the Schedule, or such other person as the Consultant may otherwise advise in writing;

“Client’s Authorised Officer ” the officer responsible for the monitoring and management of this Agreement whose details are set out in the Schedule, or such other person as the Client may otherwise advise in writing;

“Expiry Date” 6th January 2020 or on submission of report, whichever is earlier;

“Fees” the fees payable to the Consultant by the Client under the Agreement for the full and proper performance by the Consultant of its obligations under this Agreement, as set out in the Schedule;

“Force Majeure Event” any cause materially affecting the performance of the Services under the Agreement arising from any act, events, omissions, happenings or non-happenings beyond the parties reasonable control including, without limitation, acts of God, war, riot, fire, flood or any disaster

affecting either of the parties but will not mean any labour dispute between the Consultant and the Consultant's employees, agents or sub-contractors;

“GDPR”

the General Data Protection Regulation (2016), Regulation (EU) 2016/679, as amended or re-enacted from time to time and any United Kingdom Act or European Union Regulation recognised in UK law substantially replacing the same. All compliance references to GDPR in this Agreement are applicable from 25th May 2018. On which date the Data Protection Act 1998 (the “DPA”) shall be replaced with GDPR;

“Laws”

any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body which the Consultant is bound to comply with;

“Prohibited Act”

(a) offering, promising or agreeing to give to any servant of the Client any gift or consideration of any kind as an inducement or reward:

- (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the Client; or
- (ii) for showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Client;

(b) committing any offence:

- (i) under the Bribery Act; or
- (ii) under legislation creating offences in respect of fraudulent acts; or
- (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other agreement with the Client; or
- (iv) defrauding or attempting to defraud or conspiring to defraud the Client;
- (v) any action that may reasonably be considered to be to the detriment of the Client and or its end user's welfare, either by positive action or by omission. Such action shall include but is not limited to; breach of the law, related to health, safety and or care, safeguarding, abuse, sexual allegations and or misconduct; financial malpractice or business continuity failure;

“Safety Legislation”

the Health and Safety at Work Act 1974 and the Consumer Protection Act 1987 together with all regulations made under them including, but not limited to, the General Product Safety Regulations 1994, the Control of Substances Hazardous to Health Regulations 1999 and all other legislation, codes of practice and guidance from time to time amended (including subordinate legislation and European Community legislation to the effect that it has direct effect on member states) imposing legal requirements with respect to health and safety at work and/or the safety of any goods and equipment used in the performance of the Services and the health and safety of the users of such equipment;

“Schedule”

the schedule attached to this Agreement;

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“Services”	the services to be provided to the Client by the Consultant and its Staff, as specified in the Schedule;
“Staff”	all persons employed by the Consultant to perform its obligations under the Agreement together with the Consultant’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Agreement.
“Working Day”	Monday to Friday, excluding public holidays in England and Wales.

- 1.2 The interpretation and construction of the Agreement shall be subject to the following provisions:
- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - (b) words importing the masculine include the feminine and neuter;
 - (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
 - (d) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
 - (e) references to any party shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - (f) the words “include”, “included”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
 - (g) headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.
 - (h) in cases of conflict the following order of precedence shall apply:
 - 1. the terms and conditions of this Agreement;
 - 2. the Schedule.

2. COMMENCEMENT AND DURATION

2.1 This Agreement is for a period commencing on the Commencement Date and terminating on the Expiry Date (the “Term”), subject always to review or such lesser period as a result of the Agreement being terminated earlier in accordance with the provisions of this Agreement.

2.2 The Consultant knowledge’s and confirms that:

2.2.1 it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Client all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Agreement; and

2.2.2 it has entered into this Agreement in reliance on its own due diligence.

3. THE SERVICE STANDARD

3.1 In performing the Services, the Consultant shall:

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- 3.1.1 comply with the terms of this Agreement and completes the Services in accordance with the requirements set out in the Schedule in all material respects ensuring that, except with the consent of the Client, the Services are carried out exclusively by the persons named in the Schedule;
- 3.1.2 operate and deliver the Services in accordance with Best Industry Practice and in compliance and conformance with all applicable Laws;
- 3.1.3 notify the Client in writing immediately on learning of any relationship or potential conflict of interest that might influence or be perceived to influence the provision of the Services;
- 3.1.4 co-operate with the Client in all matters relating to the Services;
- 3.1.5 co-operate, and procure that its Staff co-operates, with the Client in carrying out any performance monitoring, at no additional charge to the Client; and
- 3.1.6 use its best endeavours to promote the interests of the Client.

4. FEES AND PAYMENT

- 4.1 In consideration of the performance of the Consultant's obligation under the Agreement, the Client shall pay the Fees set out in the Schedule within thirty (30) days of a correctly rendered invoice. No extra charges shall be effective unless agreed in writing and signed by the Client.
- 4.2 All invoices shall be directed to the Client's Authorised Officer.
- 4.3 The Client shall pay all undisputed invoices submitted to it by the Consultant in accordance with the payment arrangements set out in the Schedule, to a bank account nominated in writing by the Consultant. Each invoice shall include such supporting information required by the Client to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 4.4 The Client may reduce payment in respect of any Services which the Consultant has either failed to provide or has, in the Client's reasonable opinion, provided inadequate Services;
- 4.5 All amounts payable by the Client under the Agreement are exclusive of amounts in respect of valued added tax chargeable from time to time (the "VAT"). Where any taxable supply for VAT purposes is made under the Agreement by the Consultant to the Client, the Client shall, on receipt of a valid VAT invoice from the Consultant, pay to the Consultant such additional amounts in respect of VAT as are chargeable on the performance of the Services at the same time as payment is due for the performance of the Services.
- 4.6 If the Client fails to pay any amount properly due and payable by it under the Agreement, the Consultant shall have the right to charge interest on the overdue amount at the rate of two (2) per cent per annum above the base rate for the time being of the Bank of England, accruing on a daily basis from the due date up to the date of actual payment. This clause shall not apply to payments that the Client disputes in good faith.
- 4.7 The Consultant shall maintain complete and accurate records of the time spent and materials used by the Consultant in the performance of the Services, and the Consultant shall allow the Client to inspect such records at all reasonable times on request.
- 4.8 Payment by the Client shall be without prejudice to any claims or rights which the Client may have against the Consultant and shall not constitute any admission by the Client as to the performance by the Consultant of its obligation hereunder.
- 4.9 The Client may at any time, without notice to the Consultant, set off any liability of the Consultant to the Client against any liability of the Client to the Consultant, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. Any exercise by the Client of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

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4.10 Where the Consultant enters into a Sub-Contract, the Consultant shall include in that Sub-Contract:

- 4.10.1 provisions having the same effect as clauses 4.3 - 4.4 of this Agreement; and
- 4.10.2 a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 4.3 - 4.4 of this Agreement;
- 4.10.3 in clause 4.10, “Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Client in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

5. STATUTORY RIGHTS

- 5.1 Nothing in these conditions shall affect in any way the statutory rights of the Client or any subsequent amending or consolidating legislation.
- 5.2 A party who is not a party to this Agreement is not entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 except where this Agreement expressly provides otherwise.
- 5.3 The Consultant shall at its own expense, comply in all respects with the Laws and all applicable rules and regulations and Best Industry Practice in all matters arising in the performance of or in connection with the Agreement.

6. MONITORING

- 6.1 The Consultant's performance of the Services shall be monitored by the Client's Authorised Officer, who shall be entitled to make recommendations to the Consultant for improving the standard of the Consultant's performance in undertaking the Services.
- 6.2 The Consultant's Representative will meet regularly with the Client's Authorised Officer (the "Liaison Meetings") upon receiving a request to do so, to discuss the Services being provided by the Consultant and to provide the Client with progress reports.
- 6.3 At Liaison Meetings the Client's Authorised Officer and the Consultant's Representative will review, among other things, the Consultant's performance, key performance indicators (the "KPIs") where applicable, progress-to-date on provision of the Services, and any issues relating to the performance of the Services.
- 6.4 The Client's Authorised Officer shall keep minutes of all Liaison Meetings.

7. ANTI-BRIBERY AND MODERN SLAVERY ACT REQUIRMENT

- 7.1 The Consultant shall:
 - 7.1.1 comply with all applicable anti-bribery, anti-corruption and anti-slavery legislation including, without limitation, the Bribery Act and Modern Slavery Act 2015;
 - 7.1.2 maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act, to ensure compliance with all applicable anti-bribery and anti-corruption legislation;
 - 7.1.3 use reasonable endeavours to ensure that all persons associated with the Consultant (as defined by section 8 of the Bribery Act) including any sub-contractors and suppliers comply with this clause;

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7.1.4 implement due diligence procedures for its own suppliers, sub-contractors and other participants in its supply chain, to ensure that there is no slavery or human trafficking in its supply chain;

7.1.5 use reasonable endeavours not to purchase any raw materials, resources or products from any country that has been sourced from producers or manufacturers using forced labour in its operations or practice.

8. EQUALITIES

8.1 The Consultant shall (and shall procure that its Staff shall) not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination in employment including but not limited to the Equality Act 2010, and shall (and shall procure that its Staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Services.

9. SAFEGUARDING

9.1 The Consultant acknowledges that in performing the Agreement it may have access to vulnerable adults and or children, their personal data and confidential information relating to them or members of the public and accordingly the Consultant shall ensure that no member of Staff or person is permitted to carry out work in connection with this Agreement where the Security Check (the “Security Check” means security cleared to the standard required for Staff via the Disclosure and Barring Service) reveals any conviction, caution, pending prosecution, binding over order or other criminal record or any soft information that would give a prudent and responsible Client cause for concern in the context of this Agreement. For the avoidance of doubt, and without prejudice to the generality of the foregoing, the Consultant shall ensure that no person who appears on any statutory barred list shall carry out any work in connection with this Agreement.

10. PROTECTION OF DATA

10.1 The Consultant shall throughout the term of this Agreement comply with the provisions of the DPA and or GDPR (when in force) and or any subsequent amendment thereto and shall ensure that its agents and Staff are trained in and comply with the data protection principles set out in the DPA and GDPR in their performance of the Services, at no additional cost to the Client.

10.2 For the purposes of this clause 10, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing” shall have the meaning prescribed under the DPA and GDPR.

10.3 Both parties will duly observe all their obligations under the DPA and GDPR which arise in connection with the Agreement.

10.4 Notwithstanding the general obligation in clause 10.3, where the Consultant is processing Personal Data (as defined by the DPA) as a Data Processor for the Client the Consultant shall:

10.4.1 process the Personal Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature) as set out in this Agreement or as otherwise notified by the Client;

10.4.2 comply with all applicable laws;

10.4.3 process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Consultant’s obligations under this Agreement or as is required by law or any regulatory body;

10.4.4 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or

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damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

10.4.5 take reasonable steps to ensure the reliability of its Staff and agents who may have access to the Personal Data;

10.4.6 not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Client or in compliance with a legal obligation imposed upon the Client; and

10.5 notify the Client within five (5) Working Days) if it receives:

10.5.1 a request from a Data Subject to have access to that person's Personal Data; or

10.5.2 a complaint or request relating to the Client's obligations under the DPA;

10.6 The provision of this clause 10 shall apply during the Term and indefinitely after its expiry.

11. FREEDOM OF INFORMATION

11.1 The Consultant recognises that the Client has information disclosure obligations under the Freedom of Information Act 2010 ("FOIA") and the Environmental Information Regulations ("EIR"). The Consultant agrees to provide such assistance and support as may be requested from time to time by the Client for the purposes of enabling or assisting the Client to comply with these information disclosure obligations in respect of matters relating to or arising out of this Agreement.

11.2 In the event that a request made to the Client for access to information under the FOI or the EIR, or any notice, recommendation or complaint is made to or against the Client in relation to its obligations under the FOIA or EIR, the Consultant will within five (5) Working Days of the date of a request from the Client provide to the Client, any details in its possession relating to this Agreement or to the Consultant as the Client may require to deal with such access request or deal with such notice, recommendation or complaint.

11.3 The Consultant acknowledges the Client may be obliged under the FOIA or EIR to disclose information to third parties, including information relating to the appointment of the Consultant to provide the Services under this Agreement, and the terms of this Agreement, subject to certain exemptions. The Consultant further acknowledges and accepts that the decision to disclose information and the application of any such exemptions under the FOIA or EIR will be at the Client's sole discretion PROVIDED THAT the Client shall act reasonably and proportionately in determining whether any exemptions under the FOIA or EIR may apply to protect the Consultant's legitimate commercial interests trade secrets.

12. TRANSPARENCY

12.1 The Consultant acknowledges that Client has information publication obligations the Local Government Transparency Code 2014, and agrees that this Agreement (including the Schedule), and any documentation including but not limited to requests for quotes, advertisement issued by the Client seeking expressions of interest, the pre-qualification questionnaire and the tender documents (the "Procurement Documents") issued by the Client in relation to this Agreement are not Confidential Information, and may be published by the Client, save where in the reasonable opinion of the Client the contents of the Agreement or the Procurement Documents are exempt from disclosure under the FOIA or EIR in which case, the Consultant consents to the Agreement or Procurement Documents being redacted by the Client to the extent necessary to remove or obscure the exempt content, and to publication subject to those redactions.

13. CONFIDENTIALITY AND CLIENT'S PROPERTY

13.1 Subject to clause 10 (Data Protection), clause 11 (Freedom of Information) and Clause 12 (Transparency), the Consultant shall not, without the prior written consent of the Client,, publish or disclose to any person, or permit any such disclosure by any of its employees or representatives,

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any Confidential Information received by it in relation to the Services or to the Client's business generally.

13.2 The restriction in clause 13.1 does not apply to:

13.2.1 any information required to be disclosed by an order of court or other tribunal or required to be disclosed in accordance with any law, statute, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court, delegated or subordinate legislation; or

13.2.2 any information which is already in, or comes into, the public domain otherwise than through unauthorised disclosure by the Consultant; or

13.2.3 any disclosure authorised by the Client.

13.3 All designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Services and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Services (the "Material"), and any data or documents (including copies) produced, maintained or whether or not stored on the Client's computer systems or other electronic equipment (including mobile phones, if provided by the Client) in relation to this Agreement, remain the property of the Client.

13.4 All existing and future intellectual property rights and proprietary rights including copyright and all other rights of a like nature conferred under the laws of the United Kingdom (and all other countries of the World) in all works conceived originated or made by the Consultant pursuant to the Services ("Intellectual Property") shall rest with the Consultant.

13.5 The Consultant shall hereby grant the Client exclusive and irrevocable licence to use the Intellectual Property for all purposes connected with this Agreement, including any documents or other works prepared by the Consultant its Staff and any substitutes and subcontractors.

13.6 The Consultant warrants and represents that the Intellectual Property will not infringe any intellectual property rights of which a third party is the proprietor. The Consultant agrees to indemnify the Client against any and all liability, loss, damages, costs and expenses which the Client or a third party may incur or suffer as a result of any dispute or contractual, tortious or other claims or proceedings brought against the Client by a third party alleging infringement of its intellectual property rights by reason of the use or exploitation of the Intellectual Property.

13.7 The Client may at any time (whether before or after completion of the Services, or after termination) request a copy or copies of (some or all of) the Material from you, at no additional cost to the Client and you shall provide the copy (or copies) to the Client within a reasonable period of time and in both re-writable and pdf format).

14. INDEMNITY

14.1 Without prejudice to any other provision of this Agreement, the Consultant will fully indemnify the Client against any claims made against it as a result of any failure by the Consultant to comply with any statutory provision to be observed or performed in connection with the provision of the Services.

14.2 The Consultant's liability to indemnify the Client arising under clause 14.1 will be without prejudice to any other right or remedy of the Client arising under this Agreement.

15. INSURANCE

15.1 The Consultant will throughout the Term maintain with a reputable insurance company within the UK such policies of insurance as are necessary to cover any liability of the Consultant in respect of loss of or damage to property and personal injury to, or death of, any person arising out of or in the

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course of or caused by the Consultant carrying out or failing to carry out its obligations under the Agreement or for which it may become liable to the Client under clause 14, including:

- (i) public liability insurance cover in the minimum sum of £5,000,000.00 in respect of any one incident and the number of incidents covered shall be unlimited and should be adequate to cover all risks in the performance of the Services;
- (ii) Employers liability insurance in the minimum sum of £5,000,000.00 in respect of one incident and the number of incidents covered shall be unlimited;
- (iii) professional indemnity insurance against the risk of professional negligence on the part of the Consultant or its Staff in the minimum sum of £5,000,000.00 in respect of each and every claim or series of claims arising from any one event.

15.2 The Consultant shall continue to maintain the above policies of insurance for a 12-year period following the termination of the Agreement subject to such insurance being available at commercially reasonable rates.

15.3 Upon request, the Consultant will provide the Client with details of the policies of insurance (by way of insurer's certificate) effected in accordance with clause 15.1, so as to demonstrate that clause 15.1 is being complied with.

15.4 The Consultant will immediately inform the Client of any failure or inability to maintain insurance in accordance with clause 15.1 and of any circumstances likely to render such insurance void or voidable in order that the Consultant and the Client can discuss the means of best protecting their respective positions in the absence of such insurance.

16. TERMINATION OF AGREEMENT

16.1 In the event of:

- 16.1.1 the passing by the Consultant of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Consultant or the dissolution of the Consultant; or
- 16.1.2 the making of an administration order in relation to the Consultant or the appointment of a receiver over, or the taking possession or sale by an encumbrancer of, any of the Consultant's assets; or
- 16.1.3 the Consultant making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally;

the Client may, without prejudice to any other power of termination or to any rights or remedies it may have, terminate the Agreement forthwith by notice and the Consultant shall indemnify the Client against all costs, expenses and damages for which the Client becomes liable arising from such termination.

16.2 Without prejudice to the Parties other rights and remedies, either party may forthwith terminate the Agreement by notice if the other:

- 16.2.1 commits or attempts a Prohibited Act;
- 16.2.2 fails to comply with Best Industry Practice, Safety Legislation and or the Laws;
- 16.2.3 commits any material breach of the terms of this Agreement and fails to remedy such breach within seven (7) days of being given written notice to do so by the other; or
- 16.2.4 fails to perform its obligations under the Agreement,

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and the Consultant shall indemnify the Client against all costs, expenses and damages for which the Client becomes liable arising from such termination.

16.3 Notwithstanding the generality of this clause 16 the Client shall have the right to terminate the Agreement, or to terminate the provision of any part of the Agreement at any time by giving one month's written notice to the Consultant.

17 ASSIGNMENT AND SUB-CONTRACTING

17.1 The Consultant shall not assign or sub-contract the Services under this Agreement, or any part thereof, without the permission of the Client in writing. Assignment or sub-contracting any part of the Services shall not relieve the Consultant of any obligation or duty attributable to the Consultant under this Agreement. The Consultant shall be responsible for the acts and omissions of its assignees and sub-contractors as though they were its own. Where the Client has consented to the placing of an assignment or sub-contracts, copies of each contract of assignment or sub-contract shall be provided by the Consultant to the Client within two (2) Working Days of issue.

18. DISPUTES

18.1 If the Client reasonably believes that the Services are deficient, the Consultant shall be formally notified in writing by the Client, inviting the Consultant at the earliest possible opportunity to discuss the matter and giving clear indications as to how the Services have not been satisfactory.

18.2 After such discussions, the Consultant shall remedy any agreed faults within an agreed, reasonable timescale. Once the Client has formally notified the Consultant of any such deficiencies, it shall be entitled to withhold payment of any invoices which the Consultant has submitted (or may submit) for the Services, or part pay any such invoices as it sees fit until such time as the agreed faults have been remedied.

18.3 If the Consultant is unable or unwilling to remedy the above faults, the Client may terminate this Agreement forthwith; if the Consultant feels that the Services are not deficient or that the Client has been unfair in its judgment of the quality of the Services, and the parties are unable to come to an agreement on the matter amicably between them, the matter may be resolved by reference to an independent mediator who is acceptable to both parties, and whose decision both parties agree shall be final. Both parties shall share the cost of mediation.

19. NOTICES

19.1 Any notice, request, demand, consent or approval given under or in connection with this Agreement must be given in writing. Any such notice, request, demand, consent or approval shall in the case of the Client be sent to the Client's Authorised Officer at the Client's address as set out at the beginning of this Agreement and in the case of the Consultant, to the Consultant's Representative at the Consultant's registered office address as set out at the beginning of this Agreement.

19.2 Notices may be delivered by hand or sent by post. If sent by post, a notice shall be deemed to have been received on the second Working Day following the date of posting. If sent by registered post or recorded delivery, it shall be deemed to have been received on the date and time receipt was acknowledged.

20. NO WAIVER

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement.

21. FORCE MAJEURE

Neither party shall be liable for delay in performing or failing to perform its obligations under this Agreement if the delay or failure results from Force Majeure. Such delay or failure shall not

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constitute a breach of this Agreement and the time for performance shall be extended by a period equivalent to that during which performance is prevented provided that if such delay or failure persists for more than one month nothing in this clause shall be taken to limit or prevent the exercise of the right to terminate under clause 16.

22. ACCRUED RIGHTS AND REMEDIES

The termination of the Agreement will not prejudice or affect any claim, right, action or remedy that will have accrued or will thereafter accrue to either party.

23. RIGHTS AND DUTIES RESERVED

All rights, duties and powers which the Client has as a local authority or which the Client's officers have as local authority officers are expressly reserved.

24. SURVIVAL OF TERMS

The terms of the Agreement will (except in respect of any obligations fully performed prior to or at the completion of the Services) continue in force and effect after the completion of the Services by the Consultant.

25. PUBLICITY AND BRANDING

The Consultant shall not:

- (a) make any press announcements or publicise this Agreement or its contents in any way; or
- (b) use the Client's name or brand in any promotion or marketing or announcement of orders, without the prior written consent of the Client's Authorised Officer.

26. AUTHORITY TO ENTER INTO THE AGREEMENT

Each of the parties warrants its power to enter into this Agreement and that it has obtained the necessary approvals to do so.

27. ENTIRE AGREEMENT

27.1 This Agreement contains the whole agreement between the parties and neither party has relied upon any oral or written representations made to it by the other or the others employees, representatives or agents and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

27.2 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. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

28. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement.

29. NO PARTNERSHIP OR AGENCY

29.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to bind or make or enter into any commitments for or on behalf of any other party.

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29.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

30. VARIATION

30.1 This Agreement may only be varied by a document signed by both parties.

31. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS of which this Agreement has been entered into on the date stated at the beginning of it.

Signed on behalf of the **CLIENT** by:

(1) Signature

Print

(2) Signature

Print

Signed on behalf of the **CONSULTANT** by:

(1) Signature (Director)

Print

(2) Signature (Director)

Print

THE SCHEDULE

(i) THE SCOPE OF SERVICES AND FEE

[INSERT HERE]

(ii) AUTHORISED OFFICER DETAILS

CLIENT'S AUTHORISED OFFICER	
Name:	
Job Title:	
Address:	
Telephone number:	
E-mail- address:	
CONSULTANT'S REPRESENTATIVE	
Name:	
Job Title:	
Address:	
Telephone number:	
E-mail- address:	