**THIS AGREEMENT** is made on the day of Two thousand and (NOTE: INSERT YEAR)

**BETWEEN**

**(1) EPPING FOREST DISTRICT COUNCIL** of Civic Offices High Street Epping Essex CM16 4BZ ('Council'), and

**(2) «Contractor\_Company» «Consultant\_Company»** of «Contractor\_Address1» «Contractor\_Address2» «Contractor\_Address3» «Contractor\_Postcode» «Consultant\_Address1» «Consultant\_Address2» «Consultant\_Address3» «Consultant\_Postcode» Company Registration Number (NOTE: INSERT NUMBER) (‘Consultant’/‘Contractor’)

**1. BACKGROUND**

1.1 The Council wishes to appoint the services of a specialist Consultant/Contractor for the services described in Clause 3.1 of this agreement

1.2 The Consultant/Contractor has submitted a quotation in which it has stated that it has the necessary skill to provide the Services

1.3 The Council wishes to appoint the Consultant/Contractor and the Consultant/Contractor has agreed to accept such appointment upon and subject to the terms in this agreement

**2. DEFINITIONS**

2.1 The following terms shall have the following meanings for the purposes of this Agreement

 Commencement Date means «con\_startdate»

 Conditions means the provisions contained in Clauses 3 to 19 [and/or as set out in the Contract Documents]

 Confidential Information means all information relating to this agreement and personal data and sensitive personal information as defined by the Data Protection Act 1998

 'Contract Administrator' means «pers\_firstname» «pers\_lastname» as the lead representative for this Contract or such representative as appointed by the Council from time to time

 The Council shall as soon as reasonably practicable give notice to the Consultant/Contractor of the appointment or replacement of any Contract Administrator or if any person ceases to be the Contract Administrator

 ['Contract Documents'] means the documents listed hereto

 (NOTE: INSERT TEXT)

 'Contract Standard' means the standard that complies with the performance targets and other provisions of the Contract Documents and to the extent that no criteria are stated in the Contract Documents to the reasonable satisfaction of the Contract Administrator and in any event in compliance with the requirements of Best Value under Part 1 of the Local Government Act 1999

 Laws any applicable statute or any delegated or subordinate legislation, any enforceable community rights within the meaning of Section 2 of the European Communities Act 1972, duly applicable guidance, code of practice, direction, judgement or determination with which the Council and/or the Consultant/Contractor is bound to comply

 ‘Term’ means from the Commencement Date until «con\_completiondate»

 ['the Lead means (NOTE: INSERT NAME)

 Consultant]

 The Services means the works and services listed in Clause 3.1 of this agreement

**3. APPOINTMENT**

3.1 The Council appoints the Consultant/Contractor to perform the following services for the Term in return for payment in accordance with Clause 5:

(**NOTE: INSERT TEXT)**

 (i) (NOTE: INSERT)

 (ii) (NOTE: INSERT)

 (iii) (NOTE: INSERT)

3.2 [The Consultant will appoint the Lead Consultant(s) to carry out the Services in person and will not delegate the Services to another employee or agent of the Consultant without the written consent of the Council]

**4. CONSULTANT'S/CONTRACTOR’S OBLIGATIONS**

**4.1 Provision of Services**

 The Consultant/Contractor shall provide the Services at the times specified in (NOTE: INSERT TEXT)

**4.2 Skill and Care**

4.2.1 In providing the Services [to the Contract Standard] the Consultant/Contractor shall use reasonable skill and care to be expected of an appropriately qualified and competent Consultant/Contractor

4.2.2 In providing the Services the Consultant/Contractor [the Lead Consultant] and all persons employed to provide the Services who have access to Confidential Information which is processed for and on behalf of the Council shall be fully trained and aware of their duties and responsibilities under the Data Protection Act 1998

**4.3 Directions of the Council**

 The Consultant/Contractor will at all times comply with the reasonable directions of the Council and use its reasonable endeavours to promote the interest of the Council

**4.4 Delegation**

 Not to delegate any duties or obligations arising under this Agreement otherwise than may be expressly permitted under its terms

**4.5 Indemnity**

 The Consultant/Contractor shall be liable for and shall indemnify the Council in respect of all damage loss or injury which the Council may suffer as a result of any act of neglect or default of the Consultant/Contractor its employees or agents or any failure by the Consultant/Contractor to perform the Services in accordance with the terms of this agreement

**4.6 Insurance**

4.6.1 Without prejudice to its liability to indemnify the Council as at Clause 4.5 the Consultant/Contractor shall maintain with an insurance company approved by the Council:

 4.6.1.1 Professional Indemnity Insurance to a value not less than £2 million for any one occurrence or series of occurrences arising out of this agreement provided that it is available at commercially reasonable rates in force for a period of 7 years from the date of completion of the Services

 4.6.1.2 Employers Liability Insurance to a value not less than £10 million; and

 4.6.1.3 Public Liability Insurance to a value not less than £5 million

4.6.2 If for any period professional indemnity insurance is not available on commercially reasonable terms, the Consultant/Contractor shall forthwith inform the Council by notice, and shall obtain in respect of such period such reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for the Consultant/Contractor to obtain

4.6.3 The Consultant/Contractor shall within seven working days of the Council's request provide the Council with evidence that such insurances are being maintained at its own expense

**4.7 Notice**

 To comply with the terms of any default notice served in accordance with Clause 8.2

**[4.8 Lead Consultant**

 All Services shall be performed by the Lead Consultant unless the Council has agreed otherwise in writing**]**

**[4.9 Standing Orders**

 (NOTE: DELETE OR LEAVE IN CLAUSE) This Clause is only required if the Consultant is letting or managing a contract on behalf of the Council

 The Consultant shall comply with the requirements of the Council's Contract Standing Orders and Financial Regulations annexed to this agreement and with any regulations and up-dates issued in accordance with these.

**5. THE COUNCIL'S OBLIGATIONS**

 In consideration of the Services rendered by the Consultant/Contractor under this agreement the Council agrees

5.1 To pay to the Consultant/Contractor the total sum of £(NOTE: INSERT SUM) inclusive of all disbursements

5.2 All amounts payable under this agreement shall be exclusive of value added tax which shall be paid at the rate and in the manner as prescribed by law

5.3 The Council will pay all monies due under this agreement within 30 days of the receipt of a valid VAT invoice

5.4 Any sums due and remaining unpaid at the expiry of 30 days after the date of issue of a valid VAT invoice in respect of a sum properly due shall bear interest at 8% over Bank of England Base Rate current at the date of issue of the invoice

**6. CONFIDENTIALITY**

6.1 Save as may be necessary in the performance of the Services under this agreement or as the Council may allow in writing the Consultant/Contractor agrees and undertakes to treat as confidential the Confidential Information and use it only for the purposes of the provision of the Services and for no other purpose and shall take all reasonable steps to see that its employees [and the Lead Consultant] do likewise

6.2 The Consultant/Contractor shall, and shall procure that [the Lead Consultant] its employees representatives and advisers comply with the requirements of the Council’s Corporate Policy – Data Protection current for the time being

**7. STATUS OF THE CONSULTANT/CONTRACTOR**

7.1 During this agreement, the Consultant/Contractor shall be an independent Consultant/Contractor and not an agent or employee of the Council

7.2 Nothing in this agreement shall be deemed to create a partnership or agency relationship between the Consultant/Contractor and the Council or be deemed to authorise either party to incur liabilities or obligations on behalf of or in the name of the other

**8. DEFAULT**

8.1 If for any reason the Consultant/Contractor is unable to comply with any of its obligations under this agreement it shall immediately notify the Council in writing of its failure and the reasons for it. Compliance with this clause shall not prejudice the Council’s rights under this Clause and Clause 9

8.2 In the event that the Consultant/Contractor is in breach of its obligations under this agreement, (including any breach of which the Consultant/Contractor may have given notice under Clause 8.1 of this agreement) without prejudice to the Council’s rights to immediately terminate this agreement, the Council may issue the Consultant/Contractor with a default notice detailing the breach and requiring the Consultant/Contractor to remedy the breach upon the terms and within the times stipulated in the default notice

**9. TERMINATION FOR BREACH**

 The following obligations are conditions of this agreement and any breach of them shall be deemed a fundamental breach which shall determine this agreement immediately

9.1 Failure to comply with the terms of a default notice within the times stipulated in the default notice

9.2 If the Consultant/Contractor becomes bankrupt, has a receiving order made against him, makes any arrangement with his creditors generally or takes or suffers any similar action because of debt

9.3 The occurrence of an event described in Clause 10

9.4 Assignment or delegation by the Consultant/Contractor of any of its obligations under this agreement to any person other than (NOTE: INSERT TEXT) without the prior written consent of the Council

9.5 Failure by the Council to comply with Clause 5 of this agreement **PROVIDED** **THAT** the Consultant/Contractor shall have given at least 14 days notice of its intention to do so and the Council has failed to remedy its breach within that time

**10. BRIBERY ACT**

 The Council shall be entitled to terminate this agreement forthwith and recover from the Consultant/Contractor the amount of any loss resulting in such cancellation if the Consultant/Contractor its servants or agents with or without its knowledge has

10.1 Offered given or agreed to give any person financial or other advantage of any kind as an inducement or reward for doing or not doing anything in relation to the obtaining or carrying out of this agreement or any other agreement with the Council or for showing or not showing favour or disfavour to any person in relation to this agreement or any other contract with the Council; or

10.2 Committed any offence under the Bribery Act 2010 or given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972

**11. TERMINATION CONSEQUENCES**

11.1 In the event of this agreement being determined whether by effluxion of time, notice of breach or otherwise

 11.1.1 Each party shall return to the other all property in their possession belonging to the other party

 11.1.2 At the request of the Council the Consultant/Contractor shall promptly:

* Destroy or return to the Council all Confidential Information and copies thereof (irrespective of the manner in which they are recorded.
* Erase or delete any Confidential Information which the Consultant/Contractor may have entered into any computer database or other programme, and
* Certify in writing to the Council that it has complied with the requirements of this Clause 11.1.2, provided that the Consultant/Contractor may retain documents and materials containing, reflecting, incorporating or based on the Confidential Information to the extent required by law or regulatory order, and to the extent reasonable to permit the Consultant/Contractor to keep evidence that it has performed its obligations under this agreement.

 11.1.3 The Council shall pay to the Consultant/Contractor the fees and expenses due and owing to the Consultant/Contractor up to the date of termination after taking into account all monies due to the Council in accordance with 11.1.4

 11.1.4 Where termination results under Clauses 9.1, 9.2, 9.3, 9.4, 9.5 or 10 of this agreement the Council shall be entitled to obtain the remainder of the Services from a third party and to the extent that the cost exceeds that to have been provided by the Consultant/Contractor the Council shall be entitled to recoup the same from the Consultant/Contractor together with any other costs incurred as a direct consequence of termination

11.2 Termination of this agreement shall not prejudice or affect any right of action or remedy which shall accrue or shall thereafter accrue to either party and that the provisions of this Clause 11 shall remain in force.

**12. COPYRIGHT**

12.1 The Consultant/Contractor hereby grants to the Council an unconditional and royalty-free as well as an irrevocable, non-exclusive licence in respect of the documents produced by the Consultant/Contractor for the purposes of this agreement (‘Documents’). The Council shall be entitled to use and to reproduce any of the Documents for any purpose whatsoever connected with the Services, including the construction, advertisement, letting, sale, maintenance, repair, reinstatement, reconstruction and extension of the Services. The Council shall be entitled to grant sub-licences in the terms of this agreement.

12.2 The Consultant/Contractor warrants that the use of the Documents for the purposes of the Services will not infringe the rights of any third party.

12.3 After the termination or conclusion of the Consultant's/Contractor’s employment under this agreement, the Consultant/Contractor shall supply the Council with copies and/or computer disks or memory sticks of such of the Documents as the Council may from time to time request, and the Council shall pay the Consultant’s/Contractor’s reasonable costs of producing such copies and/or disks or memory sticks.

**13. ACCESS FOR AUDIT PURPOSES**

13.1 The Consultant/Contractor shall assist representatives of the Council with any audit process or investigation by allowing them unrestricted access to any records provided reasonable notice is served e.g. documentation, files, statements, literature data or any other similar material, in whatever form relating to the carrying out of the Services, including access to any premises in which such material is stored, processed or otherwise kept. Such representative shall also be entitled to take copies of any and all documentation and to access and copy computer data.

13.2 The Consultant/Contractor shall allow the Council’s representatives to take statements from any member of the Consultant’s/Contractor’s staff at times within working hours in connection with an audit process or investigation. Such staff should be instructed by the Consultant/Contractor to co‑operate fully with such audit process or investigation pertaining to the Services.

**14. SETTLEMENT OF DISPUTES**

14.1 If any dispute or difference shall arise between the parties as to the construction of this agreement or any matter or thing of whatever nature arising under this agreement or in connection with it then the parties shall use their best endeavours to settle the dispute between themselves

14.2 If the dispute is not resolved to the satisfaction of both parties the same shall be referred to a single arbitrator to be agreed between the parties and failing such agreement within 14 days of the request of one party to the other in writing that the matter be referred to arbitration. Such reference shall be to a single arbitrator appointed for that purpose on the written request of either party. The cost of the arbitration will be borne by the parties as directed by the arbitrator. Any reference to 'arbitration' under this clause shall be deemed to be a reference to arbitration within the meaning of the Arbitration Act 1996

**15. THIRD PARTIES**

15.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 this agreement is not intended to, and does not, give any person who is not a party to it any right to the enforcement of its provisions

**16. DISCLOSURE OF AND REQUESTS FOR INFORMATION UNDER THE DATA PROTECTION ACT 1998 AND FREEDOM OF INFORMATION ACT 2000**

16.1 Notwithstanding anything to the contrary contained or implied in any documents or negotiations leading to this agreement:

 16.1.1 the Council shall be entitled to publish and/or release any and all terms or conditions of this agreement, the contents of any documents and/or information relating to the formation of this agreement under the provisions of the Freedom of Information Act 2000 and/or Data Protection Act 1998 as it sees fit unless such information is exempt from such disclosure and/or publication under the provisions of the Data Protection Act 1998 and/or Freedom of Information Act 2000

 16.1.2 nothing contained in this agreement shall prevent the Council from disclosing and/or publishing under the provisions of the Data Protection Act 1998 and/or Freedom of Information Act 2000 any term or condition or information contained in or relating to the formation of this agreement unless such information is exempt from such disclosure and/or publication under the provisions of the Data Protection Act 1998 and/or Freedom of Information Act 2000

16.2 The Consultant/Contractor shall:

 16.2.1 co-operate with the Council and supply to it all necessary information and documentation required in connection with any request received by the Council under the Data Protection Act 1998 and/or Freedom of Information Act 2000

 16.2.2 supply all such information and documentation at no cost to the Council and within seven days of receipt of any request.

16.3 The Consultant/Contractor shall not publish or otherwise disclose any information contained in this agreement or in any negotiations leading to it without the Council's previous written consent unless the Consultant/Contractor is bound to publish and/or disclose such information under the Data Protection Act 1998 and/or Freedom of Information Act 2000 and such information is not exempt from such disclosure and/or publication under the provisions of the Data Protection Act 1998 and/or Freedom of Information Act 2000.

**[17. HEALTH AND SAFETY**

17.1 The Consultant/Contractor shall ensure that employees and agents shall in the course of this agreement comply with the Health and Safety at Work etc. Act 1974 (HSWA), which term shall include all Regulations, Orders, Codes of Guidance and any other supplemental Legislation, Circulars or Guidance made or issued pursuant thereto and any statutory modification or re‑enactment thereof together with any Code of Guidance prepared by the Council and supplied to the Consultant/Contractor either before or during this agreement and that all persons who are at work, (as defined in that act), in connection with this agreement shall comply at all times with HSWA

17.2 If at any time any authorised officer of the Council considers that a breach of Health and Safety legislation exists, that officer shall:

17.3 Instruct the Consultant/Contractor to cease to carry out the Services (or a specified part thereof) either immediately or within a specified period or not later than a specified date or time

 to instruct the Consultant/Contractor

 (i) to take specified steps to secure compliance with HSWA

or

 (ii) to comply with advice or requirements of the Health and Safety Executive or a proper officer thereof

17.4 The Consultant/Contractor shall inform the Council immediately upon complying with any such instructions and shall not recommence until instructed to do so in writing

17.5 The Consultant/Contractor shall not be entitled to any payment either for Services or any part of the Services not carried out whilst complying with an instruction nor for any additional costs incurred resulting from compliance to such instruction

17.6 The Consultant/Contractor shall ensure that suitable financial provision for health and safety is made in order to facilitate any requirement changes which may result from changes of legislation]

**18. EQUAL OPPORTUNITIES**

18.1 In all its activities carried out pursuant to this agreement the Consultant/Contractor shall comply and ensure that its agents and employees comply with:

 (i) the Human Rights Act 1998 as if the Consultant/Contractor were a public body (as defined in the Human Rights Act)

 (ii) all Laws relating to equal opportunity including but without limitation to discrimination on the basis of age disability sex and sexual orientation, gender re-assignment, marriage, pregnancy and maternity, race religion or belief and

 (iii) the Council's equal opportunities policies and procedures as may be adopted and amended from time to time as notified to the Consultant/Contractor

**19. MISCELLANEOUS**

**19.1 Warranty**

 Each of the parties warrants its power to enter into this agreement

**19.2 Receipt**

 The receipt of money by either of the parties shall not prevent either from questioning the correctness of any statement in respect of such money

**19.3 Force Majeure**

 19.3.1 Neither party shall be liable to the other for any delay or non performance of its obligations under this agreement arising from any cause or causes beyond its reasonable control including, without limitation, any of the following: Act of God, Government act, war, fire, flood, explosion or civil commotion

 19.3.2 In the event of either party being so delayed or prevented from performing its obligation such party shall give notice in writing of delay or prevention to the other party as soon as reasonably possible stating the date and extent of such delay or prevention and the cause thereof and each party shall use its reasonable endeavours promptly to meet with the other party and discuss and (if necessary) negotiate terms under which the Consultant/Contractor shall continue in a varied form and adjustments be made to the provisions of this agreement accordingly. The party whose performance has been so delayed or prevented shall resume performance of its obligations, as soon as reasonably possible after the removal of this cause and shall notify the other party. In the event that such cause continues for more than one week either party may terminate this agreement immediately on written notice to the other party

**19.4 Severance**

 If any part of this agreement is found by a Court of competent jurisdiction or other competent Court to be invalid, unlawful or unenforceable then such part will be severed from the remainder of this agreement which will continue to be valid and enforceable to the fullest extent permitted by law

**19.5 Whole Contract**

 This agreement together with (NOTE: INSERT TEXT) contains the whole agreement between the parties relating to the subject matter of this agreement and shall supersede all previous agreements between the parties relating to that subject matter

**19.6 Discretion**

 Any exercise of discretion judgement or opinion or approval of any matter mentioned in this agreement or arising from it shall be binding on a party only if in writing and shall be at its sole discretion unless otherwise expressly provided for in this agreement

**19.7 Notices**

19.7.1 Any notice or other document to be served under this agreement may be delivered or sent by prepaid first class recorded delivery or registered post to the party to be served, at the address of that party identified at the head of this agreement or at any other address as either party may have notified to the other and shall be deemed to have been received by the addressee within 72 hours of posting. Any notice or document served on the Council should be addressed to the Chief Executive and sent to the address at the head of this agreement

19.7.2 In proving service of a notice or document it shall be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class recorded delivery or registered letter

**19.8 Headings**

 Headings contained in this agreement are for reference purposes only and should not be incorporated into this agreement and shall not be deemed to be any indication as to the meaning of the Clauses to which they relate

**19.9 Rights Cumulative**

 All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any right under this agreement shall restrict or prejudice the exercise of any other right granted by this agreement or otherwise available to it

**19.10 Waiver**

 Failure by the Council at any time to enforce the provisions of this agreement or to require performance by the Consultant/Contractor of the provisions of this agreement shall not be construed as a waiver of any such provision and shall not affect the validity of this agreement or any part of it or the rights of the Council to enforce any provisions in accordance with this agreement

**19.11 Joint and Several**

 All agreements on the part of the Consultant/Contractor if it shall comprise more than one person or entity shall be joint and several and the neuter singular gender throughout this agreement shall include all genders and the plural and the successor in title to the parties

**19.12 Assignment and Transfer of Contract**

 The Consultant/Contractor may not delegate assign sub-licence transfer or otherwise dispose of any of its rights or sub-contract transfer or otherwise dispose of any of its obligations under this agreement without the prior written consent of the Council

**19.13 General**

 19.13.1 Each party to this agreement irrevocably agrees that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in any way relate to this agreement or its formation and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England

 19.13.2 This Agreement may be executed in two or more counterparts each of which shall constitute an original but which when taken together shall constitute one instrument

 19.13.3 Both parties hereby acknowledge that they have had an opportunity to take independent legal advice before signing this agreement

 19.13.4 Both parties acknowledge that their relationship is governed by this agreement as a legally binding agreement

 19.13.5 The Consultant/Contractor as an independent is responsible for his own corporation or other tax

**IN WITNESS** whereof the Parties have executed this agreement as a Deed and delivered it the day and year first before written

**THE COMMON SEAL OF )**

**EPPING FOREST DISTRICT COUNCIL )**

**was hereunto affixed )**

**in the presence of: )**

**Attesting Officer**

**THE COMMON SEAL OF )**

«CONTRACTOR\_COMPANY» «CONSULTANT\_COMPANY» **)**

**was hereunto affixed )**

**in the presence of: )**

**Director**

**Director/Secretary**

**Executed as a Deed )**

**by the above named )**

«CONTRACTOR\_COMPANY» «CONSULTANT\_COMPANY» **)**

**and signed by a Director and the )**

**Secretary (or) two Directors )**

**Director**

**Director/Secretary**

**SIGNED by the )**

**above named )**

**in the presence of: )**

**Witness**

**Signature:**

**Print Name:**

**Address:**

**Occupation:**

**DATED 201(NOTE: INSERT YEAR)**

**EPPING FOREST DISTRICT COUNCIL**

**and**

**«CONTRACTOR\_COMPANY»**

**«CONSULTANT\_COMPANY»**

**A G R E E M E N T**

**«Oppo\_description»**

«oppo\_ourref»

**C O'Boyle**

**Director of Governance/**

**Solicitor to the Council**

**Epping Forest District Council**

**Civic Offices**

**High Street**

**Epping**

**Essex**

**CM16 4BZ**

(T) /z/l/contracts/Services Agreement

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