

DATED

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THE CORNWALL COUNCIL

and

[REDACTED]

CONSULTANCY AGREEMENT

FOR THE PROVISION OF [REDACTED]



Legal Services
Cornwall Council
New County Hall
Treyew Road
Truro
TR1 3AY

THIS AGREEMENT is dated

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PARTIES:

- (1) **THE CORNWALL COUNCIL** of New County Hall, Treyew Road, Truro, Cornwall, TR1 3AY (the "Council"); and
- (2) [] (Company Registration Number: []) and registered office address of [] (the "Consultant")

each a "Party" and together the "Parties".

WHEREAS:

- (A) The Council requires the Consultant to provide and the Consultant has agreed to provide [**INSERT SERVICES TO BE PROVIDED**].
- (B) In reliance on the Consultant's skill, knowledge and expertise in providing [], the Council wishes to engage the Consultant to provide the Consultancy Services upon the terms set out below.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

- 1.1 The following definitions and rules of interpretation apply in this Agreement (unless the context requires otherwise).

Agreement: means this agreement entered into between the Council and the Consultant for the provision of the Consultancy Services in accordance with these terms and conditions and the Schedules.

Best Value Duty: means the duty imposed by section 3 of the Local Government Act 1999 (the LGA 1999) as amended, and under which the Council is under a statutory duty to continuously improve the way its functions are

exercised, having regard to a combination of economy, efficiency and effectiveness and to any applicable guidance issued from time to time.

Business Day: means a day (other than a Saturday or a Sunday) on which commercial banks are open for general business on London.

Capacity: as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

Commencement

Date: means [XXXX].

Confidential

Information: means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data and Special Categories of Data within means the date of this the meaning of the Data Protection Legislation. Confidential Information shall not include information which:

- (i) was public knowledge at the time of disclosure (otherwise than by breach of clause 9 (Confidential Information; Disclosure of Information and Freedom of Information));
- (ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (iv) is independently developed without access to the Confidential Information.

Consent Notice: means the consent of an individual to the sharing of their Personal Data for the provision of the Consultancy

Services.

Consultancy Fee: means the total sum of £[] payable by the Council to the Consultant for the Consultancy Services, as set out in clause 5 and Schedule 3 of this Agreement.

Consultancy

Services: means the services to be provided by the Consultant to the Council hereunder as more specifically set out in the Specification at Schedule 1;

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's use by the Council during the Term, and any data or documents (including copies) produced, maintained or stored by the Consultant on the computer systems or other electronic equipment of the Council during the Term.

Council

Representative: means the person appointed by the Council to oversee the performance of this Agreement, with the first such person set out Schedule 3.

Data Controller: has the meaning given to it in the Data Protection Legislation.

Data Guidance: means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with Data Protection Legislation (whether specifically mentioned in this Agreement or not) to the extent published and publicly available or their existence or contents have been notified to the Consultant by the Council and/or any relevant Regulatory Body.

Data Processor: has the meaning given to it in the Data Protection Legislation.

Data Protection

Legislation: means the General Data Protection Regulations and the Data Protection Act 2018 (together referred to as the Data Protection Legislation) and subordinate and subsequent legislation.

Data Subject: has the meaning given to it in Data Protection Legislation.

EIR: means the Environmental Information Regulations 2004.

European Economic

Area: means a group of countries in Europe formed in 1994 that includes all members of the European Union and the European Free Trade Association. These countries have an agreement allowing the free movement of goods, people, services and money between them.

FOIA: means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Authority or relevant government department in relation to such legislation and the Environmental Information Regulations 2004.

Indirect Losses: means loss of profits (other than profits directly and solely attributable to the provision of the Consultancy Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis.

Information

Commissioner: means the UK's regulatory body charged with enforcing Data Protection Legislation.

Information

Governance Lead: means the individual responsible for information governance and for providing the Consultant with regular reports on information governance matters, including details of all incidents of data loss and breach of confidence.

Instruction: means an instruction to commence the Consultancy Services which shall be given in writing by the Council.

Insurance

Policies: Professional Indemnity Insurance with a limit of indemnity of not less than one million (£1,000,000), Employers Liability Insurance with a limit of indemnity of not less than two million (£2,000,000) and Public Liability Insurance with a limit of indemnity of not less than two million (£2,000,000).

Intellectual

Property Rights: patents, utility models, rights to Inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, 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.

Invention: any invention, idea, discovery, development, improvement or innovation made by the Consultant in connection with the provision of the Consultancy Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

Joint Data

Controller: shall have the meaning given it in the Data Protection Legislation.

Law: means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body or Relevant Authority with which the Consultant is bound to comply.

Living Wage: means the living wage as determined and amended from time to time by the Living Wage Foundation.

Losses: means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services), proceedings, demands and charges whether arising under statute, contract or at common law, but, excluding Indirect Losses.

Personal Data: has the meaning given to it in the Data Protection Legislation.

Personal Data

Breach: has the meaning given to it in the Data Protection Legislation.

Privacy Notice: means the information that must be provided to a Data Subject under the Data Protection Legislation.

Regulated Activity: means a regulated activity as defined in the Safeguarding Vulnerable Groups Act 2006.

**Right of Access,
Rectification or**

Erasure Request: means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to

Data Protection Legislation to access, rectify or erase their Personal Data.

Schedule: means the schedules attached hereto.

Special Categories

of Data: has the meaning given to it in the Data Protection Legislation.

Specification: the Specification attached at Schedule 1 provided by the Council to the Consultant setting out its requirements in relation to the Consultancy Services.

Term: means the period from the Commencement Date until the Termination Date.

Termination Date: means [REDACTED].

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 in connection with the provision of the Consultancy Services.

- 1.2 The headings in this Agreement 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 Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

2. TERM

- 2.1 The Council shall engage the Consultant and the Consultant shall provide the Consultancy Services in accordance with the terms of this Agreement.

- 2.2 The Consultant shall provide the Consultancy Services from the Commencement Date until the Termination Date unless terminated earlier:

- (a) as provided by the terms of this Agreement; or
- (b) by the Council giving to the Consultant not less than thirty (30) days prior written notice.

3. DUTIES AND OBLIGATIONS

- 3.1 During the Term the Consultant shall:

- (a) co-operate with the Council in all matters relating to the Consultancy Services and comply with all the Council's reasonable instructions (in so far as it relates to the Consultancy Services);
- (b) provide the Consultancy Services in accordance with the Specification;
- (c) provide all other services reasonably required by the Council which are reasonably incidental to the Consultancy Services in accordance with the terms of the Agreement;
- (d) provide the Consultancy Services in a timely manner to help meet any deadlines, with all reasonable care, skill and diligence in accordance with good industry practice in the Consultant's industry,

profession or trade and use its best endeavours to promote the interests of the Council;

- (e) keep the Council fully informed and provide it with regular reports on all matters in respect of the Consultancy Services of interest to a prudent client, together with such information as the Council may reasonably require from time to time.

3.2 Time shall be of the essence in relation to the performance by the Consultant of the Consultancy Services. If the Consultant becomes aware that there is, or there is reasonably likely to be a delay under this Agreement or the Consultant is unable to or fails to provide any part of the Consultancy Services it shall:

- 3.2.1 notify the Council as soon as practically possible and no later than within two (2) working days from becoming aware of the delay, anticipated delay or the inability to or failure to provide any part of the Consultancy Services; and
- 3.2.2 include in its notification an explanation of the actual or anticipated impact of the delay, failure or inability to provide any part of the Consultancy Services; and
- 3.2.3 comply with the Council's reasonable instructions in order to address the impact of the delay, anticipated delay, failure or inability to provide any part of the Consultancy Services; and
- 3.2.4 use all reasonable endeavours to eliminate or mitigate the consequences of any delay, anticipated delay failure or inability to provide any part of the Consultancy Services.

The provision of information under this clause 3.2 shall not in any way release or excuse the Consultant from any of its obligations under the Agreement.

3.3 The Consultant shall take all reasonable steps to ensure the accuracy of all documentation and information supplied to the Council by the Consultant in connection with the provision of the Consultancy Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions contained therein as a result of the any act, omission or negligence of the Consultant.

3.4 The Consultant shall at all times allow the Council's Representative, professional advisors and such other persons as from time to time nominated by the Council's Representative if relevant, and in so far as it relates to the Consultancy Services, access to:

- (a) any work places of the Consultant for the purpose of inspecting work being performed pursuant to the Agreement;
- (b) any work places of the Consultant for the purpose of inspecting and taking copies of records and documents in the possession, custody or control of the Consultant in connection with the Agreement;
- (c) any personnel or agent of the Consultant for the purpose of interviewing such persons in connection with the Agreement;
- (d) any report required by any statutory enactment or regulation or a copy thereof shall be supplied by Consultant if requested to do so in writing by the Council.

3.5 The Consultant shall at all times during the Agreement and for a period of six (6) years thereafter:

- (a) keep secure and give or make available for inspection by the Council;

- (b) its internal auditors, the Local Government Ombudsman and the District Auditor all original and copy records, documents, information, statements and papers which may be acquired or produced by the Consultant or by any permitted sub-contractor in the performance of the Agreement. In default of compliance, the Council may recover possession of such materials and the Consultant grants a licence to the Council or its appointed agents to enter for that purpose any premises of the Consultant or its permitted sub-contractors where any such materials may be held, and
- (c) co-operate fully with any investigations at its own expense and make such explanations to the Council, its internal auditors, the Ombudsman and the District Auditor as may be necessary for them to be satisfied that the terms and conditions of the Agreement, the Council's Contract Procedure Rules, Financial Regulations and all statutory and regulatory provisions relating to the Agreement are being and have been complied with.

3.6 The Consultant shall at all times (where relevant) comply with the Council's contract procedure rules, financial regulations and all policies and procedures as may be amended from time to time.

3.7 Unless it has been specifically authorised to do so by the Council in writing:

- (a) the Consultant shall not have any authority to incur any expenditure in the name of or for the account of the Council;
- (b) the Consultant shall not hold itself or themselves out as having authority to bind the Council;
- (c) the Consultant shall not advertise the fact that it is undertaking the Agreement other than with the written consent of the Council; and
- (d) except and to the extent and upon the terms of the Agreement or as otherwise required or permitted by the Council, the Consultant shall not use any facilities or equipment of the Council.

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 Consultancy Services provided that:

- (a) the Council will not be liable to bear the cost of such functions; and
- (b) 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 as may be necessary or appropriate co-operate, liaise with, and co-ordinate its activities with those of any other Consultant or contractor or sub-contractor employed directly or indirectly by the Council and shall provide the Consultancy Services in harmony with and at no detriment to any other services provided by or on behalf of or to the Council. If the Consultant or its personnel default in complying or fail to comply with this Clause, then any costs, expenses, liabilities or damages whatsoever incurred by the Council as a consequence thereof, including the reasonable cost to the Council of the time spent by its officers as a result of the default or failure, may be deducted from any sums due or to become due to the Consultant under the Agreement or shall be recoverable from the Consultant by the Council as a debt.

3.10 The Consultant shall:

- (a) 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');
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

- (c) have and shall maintain in place throughout the term of this Agreement 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 will enforce them where appropriate;
- (d) promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Consultant in connection with the performance of this Agreement;
- (e) immediately notify the Council if a foreign public official becomes an officer or employee of the Consultant or acquires a direct or indirect interest in the Consultant (and the Consultant warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement);
- (f) ensure that all persons associated with the Consultant or other persons who are performing services in connection with this Agreement comply with this Clause 3.10 and
- (g) within one (1) week of the date of this Agreement, certify to the Council in writing, compliance with this Clause 3.10 by the Consultant and all persons associated with it, and all other persons for whom the Consultant is responsible under Clause 3.10(f). The Consultant shall provide such supporting evidence of compliance as the Council may reasonably request.

3.11 Failure to comply with Clause 3.10 may result in the immediate termination of this Agreement.

3.12 For the purpose of Clause 3.10 the meaning of adequate procedures and foreign public official whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6(5) and 6(6) of that Act and section 8 of that Act respectively.

- 3.13 Any staff employed by the Consultant or its sub-contractors in connection with the performance of its obligations pursuant to the Contract will be paid no less than the Living Wage

4. REPRESENTATIVES

Council's Representative

- 4.1 The Council's Representative shall be the person named in Schedule 3 or such other person nominated in writing by the Council from time to time to act in the name of the Council for the purposes of the Agreement.
- 4.2 The Council's Representative shall have power to issue reasonable instructions to the Consultant on any matter relating to the provision of the Consultancy Services and the Consultant shall comply therewith.

Consultant's Representative

- 4.3 The Consultant shall appoint a senior person as the Consultant's Representative empowered to act on behalf of the Consultant for all purposes connected with the Agreement. The first such person appointed under this Agreement is set out in Schedule 3. Such appointment or any further appointment shall be subject to the approval of the Council. The Consultant's Representative shall not be replaced without the prior written approval of the Council, such approval not to be unreasonably withheld. Any notice, information, instruction or other communication given to the Consultant's Representative shall be deemed to have been given to the Consultant.
- 4.4 The Consultant shall forthwith give notice in writing to the Council's Representative of the identity, address and telephone numbers of any person appointed as the Consultant's Representative and of any subsequent appointment.

4.5 The Consultant shall forthwith give notice in writing to the Council's Representative of the identity, address and telephone numbers of any person authorised to act for any period as deputy for the Consultant's Representative and when such deputy ceases to be so authorised.

4.6 Where the nature or the place of any duties upon which the Consultant's personnel shall be engaged in the provision of the Consultancy Services make the wearing of any special or protective clothing or footwear necessary or appropriate, the Consultant shall provide and shall require its personnel to wear such clothing or footwear.

5. INSTRUCTIONS TO CONSULTANT

5.1 The Council's Representative and other Council personnel may request to meet with the Consultant during this Agreement. As a minimum the Consultant shall attend review meetings (as set out in the Specification) with the dates of these meetings to be reasonably agreed between the Parties. The Consultant shall attend such meetings upon reasonable notice during which instructions may be issued by the Council's Representative to the Consultant.

5.2 For the avoidance of doubt the above clause 5.1 does not limit the Council from issuing additional instructions in writing and the Council's Representative may from time to time issue such instructions to the Consultant to provide aspects of the Consultancy Services.

5.3 Such instructions will specify the nature of the work to be undertaken and notwithstanding any provision as to agreed timescales as set out in this Agreement, the Council's requirements as regards the timescale for the delivery of the required Consultancy Services and for the avoidance of

doubt the timescale may encompass any number of separate dates or times for the provisions of the Consultancy Services or any part thereof.

5.4 Should the Consultant be of the opinion that any such timescale is unreasonable it shall be given a right of reasonable objection provided that this right is exercised forthwith.

5.5 Without prejudice to the obligations of the Consultant set out in clause 3.1 the Parties shall use reasonable endeavours to agree a mutually acceptable timescale for the delivery of the Consultancy Services.

5.6 Notwithstanding any data in regard to the value and/or volume of work set out in this Agreement, the Council gives no guarantee and accepts no liability as to the actual value or extent of the Consultancy Services which the Consultant may be required to provide.

6. FEES

6.1 The remuneration payable to the Consultant in respect of the performance of the Consultancy Services ("the Fee") shall be calculated and paid in accordance with the provisions set out in Schedule 2. The total fees payable to the Consultant shall not exceed the figures set out in Schedule 2, except by prior agreement to amend as may be necessary.

6.2 In consideration of the provision of the Consultancy Services, the Council shall pay each invoice submitted by the Consultant in accordance with Clause 6.1 and Schedule 2, within thirty (30) days of receipt.

6.3 The Council shall be entitled to deduct from the fees (and any other sums) due to the Consultant any sums that the Consultant may owe to the Council at any time.

- 6.4 Payment in full or in part of the fees claimed under Clause 6.1 shall be without prejudice to any claims or rights of the Council against the Consultant in respect of the provision of the Consultancy Services.
- 6.5 The remuneration payable to the Consultant under this Agreement is exclusive of any applicable Value Added Tax which shall be payable by the Council at the rate and in the manner prescribed by law against submission of a valid tax invoice.
- 6.6 The Council shall be liable to pay to the Consultant such Value Added Tax as may be properly chargeable on the Consultant in respect of the supply of the Consultancy Services to the Council except to the extent that any such Value Added Tax or penalties related thereto are so chargeable because of some breach by the Consultant of the relevant statutory provisions or of some failure to avail itself of a benefit or opportunity available under a relevant statutory provision.
- 6.7 The Consultant shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time in respect of the Consultant's failure to account for or to pay any Value Added Tax relating to payments to the Consultant under this Agreement.

7. EXPENSES

- 7.1 The Consultant shall bear its own expenses incurred in the course of delivering the Consultancy Services.

8. OTHER ACTIVITIES

- 8.1 Nothing in this Agreement shall prevent the Consultant from being engaged, concerned or having any financial interest in any Capacity in any

other business, trade, profession or occupation during the Term provided that:

- (a) such activity does not cause a breach of any of the Consultant's obligations under this Agreement.
- (b) the Consultant shall give priority to the provision of the Consultancy Services to the Council over any other business activities undertaken by it during the Term.

9. CONFIDENTIAL INFORMATION, DATA PROTECTION AND FREEDOM OF INFORMATION

9.1.1 Except where otherwise provided for in this Agreement, Confidential Information is owned by the Party that discloses it (the "Disclosing Party") and the Party that receives it (the "Receiving Party") has no right to use it.

9.1.2 Subject to Clauses 9.1.3 and 9.1.4, the Receiving Party agrees:

- (a) to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Agreement;
- (b) not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
- (c) to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.

9.1.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:

- (a) in connection with any dispute resolution under clause 21 (Dispute Resolution);
- (b) in connection with any litigation between the Parties;

- (c) to comply with the law;
- (d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in Clause 9.1.2;
- (e) to comply with a regulatory body's request.

9.1.4 The obligations in Clauses 9.1.2 and 9.1.3 will not apply to any Confidential Information which:

- (a) is in or comes into the public domain other than by breach of this Agreement;
- (b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
- (c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.

9.1.5 The obligations in Clauses 9.1.2 and 9.1.3 shall not apply where the Confidential Information is related to an item of business at a board meeting of the Council or of any committee, sub-committee or joint committee of the Council or is related to an executive decision of the Council and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Council shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Consultant and where

reasonably practicable shall consider any representations made by the Consultant.

9.2 INFORMATION GOVERNANCE AND DATA PROTECTION

- 9.2.1 The Parties must comply with Data Protection Legislation, Data Guidance, the FOIA and the EIR, and must assist each other as necessary to enable each other to comply with these obligations.
- 9.2.2 The Consultant must comply with and must demonstrate satisfactory compliance with clause 9.2.1 above.
- 9.2.3 The Consultant must:
 - (a) nominate an Information Governance Lead;
 - (b) ensure that the Council is kept informed at all times of the identities and contact details of the Information Governance Lead;
- 9.2.4 If the Consultant is required under Data Protection Legislation to notify the Information Commissioner or a Data Subject of a Personal Data Breach then within forty eight (48) hours of the breach occurring the Consultant must inform the Council of the Personal Data Breach, and if the Consultant will report the breach to the Information Commissioner within seventy two (72) hours as is required within the Data Protection Legislation.
- 9.2.5 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9.2 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.

- 9.2.6 Whether or not a Party or Sub-Contractor is a Data Controller or Data Processor will be determined in accordance with Data Protection Legislation and any further Data Guidance. The Parties acknowledge that a Party or Sub-Contractor may act as both a Data Controller and a Data Processor, or a Joint Data Controller.
- 9.2.7 Without prejudice to the generality of clause 9.2, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Consultant for the duration and purposes of this Agreement.
- 9.2.8 Where required under Data Protection legislation, the Consultant shall ensure that it has a Privacy Notice or Consent Notice in place.
- 9.2.9 Any failure by the Consultant to inform individuals as required by Data Protection Legislation or Data Guidance about the uses of Personal Data that may take place under this Agreement cannot be relied on by the Consultant as evidence that such use is unlawful and therefore not contractually required.
- 9.2.10 Without prejudice to the generality of clause 9.2, the Consultant must ensure that all Personal Data processed by or on behalf of the Consultant in the course of delivering the Consultancy Services is processed in accordance with the relevant Parties' obligations under Data Protection Legislation and Data Guidance. The Consultant shall:
- (a) process Personal Data only on the written instructions of the Council, unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union ("Applicable Laws") applicable to the Supplier to otherwise process the Personal Data. Where the Supplier is so required, it shall promptly notify the Council before processing the Personal Data, unless prohibited by the Applicable Laws;

- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);
- (c) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Consultant has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) 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; and
 - (iv) the Consultant complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (d) notify the Council as soon as reasonably practicable if it receives:

- (i) a request from a Data Subject to have access to that individual's Personal Data;
 - (ii) a Right of Access, Rectification or Erasure Request;
 - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (e) at the Consultant's expense, assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) at the written direction of the Council, delete or return Personal Data and copies thereof to the individual on termination or expiry of this Agreement unless required by the Applicable Laws to store the Personal Data;
- (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 9.2 and allow for audits by the Council or the Council's designated auditor.

9.2.11 Where the Council requires information for the purposes of quality management, the Consultant must consider whether the Council's request can be met by providing anonymised or aggregated data which does not contain Personal Data. Where Personal Data must be shared in order to meet the requirements of the Council, the Consultant must:

- (a) provide such information in pseudonymised form where possible; and in any event
- (b) ensure that there is a legal basis for the sharing of Personal Data.

9.2.12 Subject always to clause 29 (Assignment and Sub-Contracting), if the Consultant is to engage any Sub-Contractor to deliver any part of the Consultancy Services (other than as a Data Processor) and the Sub-Contractor is to access personal or confidential information or interact with individuals, the Consultant must impose on its Sub-Contractor obligations that are no less onerous than the obligations imposed on the Consultant by this clause 9.2.

9.2.13 The Consultant shall indemnify the Council against any Losses incurred by the Council arising from, or in connection with, any breach of the Consultant's obligations under this clause 9.2.

9.2.14 Notwithstanding any other provision of this Agreement, where the Consultant commits a Personal Data Breach which under Data Protection Legislation must be notified to the Information Commissioner and/or to an individual the Council may terminate this Agreement with immediate effect.

9.3 FREEDOM OF INFORMATION AND TRANSPARENCY

9.3.1 The Parties acknowledge their respective duties under the FOIA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

9.3.2 If the Consultant is not a public authority, the Consultant acknowledges that the Council is subject to the requirements of the FOIA and will assist and co-operate with the Council to enable the Council to comply with its disclosure obligations under the FOIA. Accordingly the Consultant agrees:

- (a) that this Agreement and any other recorded information held by the Consultant on the Council's behalf for the purposes of this Agreement are subject to the obligations and commitments of the Council under the FOIA;

- (b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Council;
- (c) that if the Consultant receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Council) and will promptly (and in any event within 2 working days) transfer the request to the Council;
- (d) that the Council, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Consultant and this Agreement either without consulting with the Consultant, or following consultation with the Consultant and having taken its views into account; and
- (e) to assist the Council in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by an authority within 5 working days of such request and without charge.

9.3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information.

9.3.4 Notwithstanding any other provision of this Agreement, the Consultant hereby consents to the publication of this Agreement in its entirety including from time to time agreed changes to this Agreement subject

to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.

9.3.5 In preparing a copy of this Agreement for publication pursuant to clause 9.1.4 the Council may consult with the Consultant to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Council's absolute discretion.

9.3.6 The Consultant shall assist and co-operate with the Council to enable the Council to publish this Agreement.

9.3.7 In order to comply with the Government's policy on transparency in the areas of Agreements and procurement the Council will be disclosing information on its website in relation to expenditure over £500 (five hundred pounds) in relation to this Agreement. The information will include the Consultant's name and the Charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.

9.3.8 The Consultant shall comply with any requirements (including compliance with any appropriate information assurance scheme and the Computer Misuse Act 1990) in relation to its security policies, procedures and control of Confidential Information, Personal Data and Special Categories of Data.

9.3.9 The Consultant shall be responsible for any costs associated with its compliance with the provisions of this clause 9.

9.4 The Consultant shall indemnify the Council and shall keep the Council indemnified against Losses and Indirect Losses suffered or incurred by the Council as a result of any breach of this clause 9.

9.5 The Parties acknowledge that damages may not be an adequate remedy for any breach of this clause 9, and in addition to any right to damages the Council shall be entitled to the remedies of injunction, specific performance

and other equitable relief for any threatened or actual breach of this clause. This clause 9 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

10. INTELLECTUAL PROPERTY

- 10.1 Pursuant to and for the consideration set out in the Agreement the Consultant hereby assigns with full title guarantee (or shall use all reasonable endeavours to procure that any person, firm or company who is in a position to assign the same with full title guarantee shall assign to the Council) with effect from the Commencement Date or in the case of Intellectual Property Rights not yet in existence with effect from the creation thereof, to the Council, the Intellectual Property Rights created by the Consultant in the performance of the Consultancy Services. The Consultant shall not be liable for the use of any such Intellectual Property Rights other than for which the same was originally prepared or provided by or on behalf of the Consultant.
- 10.2 The Consultant warrants to the Council that the Intellectual Property Rights referred to in Clause 10.1 are, save to the extent that duly authorised sub-contractors have been used, the Consultant's own original work and that in performance of the Consultancy Services it has not infringed and will not infringe any intellectual property right of any third party. The Consultant further warrants that where duly authorised sub-contractors are used their work will be original.
- 10.3 The Consultant shall indemnify and keep indemnified the Council against all reasonably foreseeable and legally enforceable actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Consultant of this Clause 10.

11. INSURANCE AND LIABILITY

- 11.1 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 of the terms of this Agreement including any negligent or reckless act, omission or default in the provision of the Consultancy Services and shall accordingly maintain in force during the Term full and comprehensive Insurance Policies.
- 11.2 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.
- 11.3 The Consultant shall on request supply to the Council copies of the Insurance Policies and evidence that the relevant premiums have been paid.
- 11.4 The Consultant shall notify the insurers of the Council's interest and shall cause the interest to be noted on the Insurance Policies together with a provision to the effect that, if any claim is brought or made by the Council against the Consultant in respect of which the Consultant would be entitled to receive indemnity under any of the Insurance Policies, the relevant insurer will indemnify the Council directly against such claim and any charges, costs and expenses in respect of such claim. If the relevant insurer does not so indemnify the Council, the Consultant shall use all insurance monies received by it to indemnify the Council in respect of any claim and shall make good any deficiency from its own resources.
- 11.5 The Consultant shall comply 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.

12. STATUTORY OBLIGATIONS

- 12.1 The Consultant shall at all times comply with the requirements of the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999 and all other statutory and regulatory requirements and the Council's policies and procedures relating to health and safety.
- 12.2 The Consultant shall at all times ensure that its staff, whilst on the premises owned, managed, controlled or occupied by the Council ("Council Premises"), comply with the Council's policies and procedures relating to health and safety.
- 12.3 The Council's Representative or its nominated health and safety representative reserves the right at any time to monitor and audit health and safety systems and procedures relevant to the Consultancy Services under the Agreement, including the request for a copy of the organisation's health and safety policy and such other information (including all related policies and risk assessments) relating to the provision of the Consultancy Services.
- 12.4 The Consultant shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at Council Premises of which it becomes aware and which relate to or arise in connection with the performance of the Agreement.
- 12.5 The Consultant shall properly maintain records of all accidents and incidents and notify the Council of all incidents that occur on Council Premises and/or meet the criteria of Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 which arise in connection with the performance of the Agreement.

- 12.6 The Consultant shall at all times comply with the requirement of the Equality Act 2010 and all other relevant related statutory and regulatory requirements and the Council's policies and procedures, copies of which are available on request, relating to equal opportunities and shall not treat any person or group of people less favourably than another on the grounds of race, colour, religion, belief, ethnicity, gender, age, disability, nationality, marital status and civil partnership, pregnancy and maternity or sexual orientation.
- 12.7 The Consultant shall at all times comply with all statutory and European and domestic statutory and regulatory requirements where relevant to the provision by the Consultant of the Consultancy Services.
- 12.8 The Consultant shall indemnify the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever and howsoever arising in respect of any breach by the Consultant of this Clause 12.

13. MODIFICATIONS TO CONSULTANCY SERVICES

- 13.1 The Council's Representative shall have the power to issue to the Consultant instructions in writing:
- 13.1.1 requiring the Consultant to vary the scope of the Consultancy Services or any part thereof;
 - 13.1.2 requiring the Consultant to omit or postpone the performance of any part or the whole of the Consultancy Services;
 - 13.1.3 requiring the Consultant to vary any instructions or any part thereof issued pursuant to clause 5.
- 13.2 The valuation of modifications to Consultancy Services requested pursuant to clause 13 shall be ascertained by the Council's Representatives in accordance with clause 6.

14. WARRANTIES

- 14.1 The Consultant warrants to the Council that in respect of the Consultancy Services to be provided by it under this Agreement that it has exercised and will continue to exercise all reasonable skill, care and diligence to be expected of a consultant who is properly qualified and experienced to carry out such services.
- 14.2 No enquiry, inspection, approval, sanction, comment or consent at any time made or given by or on behalf of the Council shall operate to exclude or limit the Consultant's obligation to exercise the reasonable skill, care and diligence required by clause 14.1. The liability of the Consultant under this Agreement shall not be released, diminished or in any other way affected by the appointment by the Council of or by any failure by the Council to appoint any third party to advise on issues in respect of the Consultancy Services or by any act or omission of any third party whether or not such act or omission might give rise to an independent liability of such third party to the Council.
- 14.3 The Consultant warrants and represents to the Council that:
- 14.3.1 it is not insolvent nor has it taken or suffered any action in consequence of debt;
 - 14.3.2 as at the Commencement Date all information provided to the Council by the Consultant remains true, accurate and not misleading save as may be specifically disclosed in writing to the Council prior to the execution of this Agreement;
 - 14.3.3 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
 - 14.3.4 in the last three (3) years prior to the Commencement Date:

- 14.3.4.1 it has conducted all financial accounting and reporting activities in accordance with generally accepted accounting principles;
 - 14.3.4.2 it has been in full compliance with all applicable tax laws;
 - 14.3.4.3 it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfill its obligations under this Agreement.
- 14.4 If the Consultant receives a written notice from the Council identifying a breach of the warranties set out in this clause 14 or otherwise becomes aware of its failure to comply with the warranties set out in this clause 14 the Consultant shall at its own expense, promptly remedy such breach or failure.
- 14.5 If the Consultant cannot provide any of the provisions under clause 14 or can only provide them late or otherwise or if it becomes aware of anything that could hinder the Consultant from complying with this Agreement, it shall inform the Council's Representative promptly in writing giving details of the circumstances and likely duration of delay. The provision of information under this clause shall not in any way release or excuse the Consultant from its obligations under this Agreement.
- 14.6 Subject to giving reasonable notice thereof to the Consultant if the Consultant is unable or fails to supply any of the provisions under this clause 14 in accordance with this Agreement the Council may order it and/or the Consultancy Services to be supplied from someone else and the Consultant shall reimburse the Council for any reasonable cost over the amount it would have paid the Consultant, and any additional cost incurred in ordering or in consequence of the Consultant's inability or failure. The Council's rights under this clause are without prejudice to any other rights or remedies which it might possess.

- 14.7 Each Party hereto warrants and represents to the other that it has full authority, power and capacity to enter into this Agreement and that all necessary actions have been taken to enable it lawfully to enter into this Agreement.

15. TERMINATION

- 15.1 Notwithstanding the provisions of Clause 2, the Council may terminate the Agreement 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:

- (a) the Consultant commits any gross misconduct affecting the Council;
- (b) the Consultant commits any serious or repeated breach or non-observance of any of the provisions of this Agreement or refuse or neglect to comply with any reasonable and lawful directions of the Council;
- (c) the Consultant 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
- (d) the Consultant, in the reasonable opinion of the Council, is negligent or incompetent in the performance of the Consultancy Services;
- (e) the Consultant is declared bankrupt or makes any arrangement with or for the benefit of his/her creditors or have a county court administration order made against them under the County Court Act 1984;
- (f) the Consultant makes a resolution for its winding up, makes an 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;

- (g) the Consultant is incapacitated (including by reason of illness or accident) from providing the Consultancy Services for an aggregate period of three (3) days in any six (6) week consecutive period;
- (h) the Consultant commits any fraud or dishonesty or acts in any manner which in the opinion of the Council brings or is likely to bring the Consultant or the Council into disrepute or is materially adverse to the interests of the Council;
- (i) the Consultant commits any breach of the Council's policies and procedures; or
- (j) the Consultant commits any offence under the Bribery Act 2010.

15.2 Where the Council terminates the agreement under Clause 15.1 and then makes other arrangements for the supply of the Consultancy Services to replace the Consultancy Services, the Council may recover from the Consultant the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council provided that the Council shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Council to the Consultant until the Council has established the final cost of making those other arrangements.

15.3 The rights of the Council under Clause 15 are without prejudice to any other rights that it might have at law to terminate the Agreement or to accept any breach of this Agreement on the part of the Consultant as having brought the Agreement to an end. Any delay by the Council in exercising its rights to terminate shall not constitute a waiver of these rights.

16. OBLIGATIONS ON TERMINATION

16.1 On the Termination Date the Consultant shall:

- (a) immediately deliver to the Council all Council Property which is in its or his possession or under its or his control;
- (b) irretrievably delete any Confidential Information relating to 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 delivery of the Consultancy Services are regarded as Confidential Information, and as such, must be deleted from personal social or professional networking accounts; and
- (c) provide a signed statement that it or he has complied fully with its or his obligations under this Clause 16.

16.2 In the event of an early termination of this Agreement by the Council in accordance with Clause 2.2(b), the Council agrees to pay to the Consultant all fees and charges reasonably and properly incurred in accordance with Schedule 2 which arose prior to the Termination Date. The Consultant warrants to the Council that it will use its reasonable endeavours to mitigate all such outstanding fees and charges owed by the Council and to minimise these and the Council's losses as far as reasonably possible.

17. STATUS

- 17.1 The relationship of the Consultant to the Council will be that of independent contractor and nothing in this Agreement shall render it an employee, worker, agent or partner of the Council and the Consultant shall not hold itself out as such.
- 17.2 This agreement 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:

- (a) 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 the performance of the Consultancy Services, where the 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;
 - (b) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Consultant against the Council arising out of or in connection with the provision of the Consultancy Services.
- 17.3 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.

18. SAFEGUARDING

- 18.1 The Consultant shall develop and maintain awareness and understanding of safeguarding issues with vulnerable adults, children and young people.
- 18.2 The Consultant shall ensure that all allegations, suspicions and incidents of abuse, harm or risk of harm to children and/or vulnerable adults or where there is concern about the behaviour of an individual are reported immediately to the Council's Representative and the Multi Agency Referral Unit (MARU) 0300 123 1116.
- 18.3 The Consultant shall ensure that children and/or adults at risk are safeguarded from any form of exploitation including physical, financial, psychological and sexual abuse, neglect, discriminatory abuse or self-harm or inhumane or degrading treatment through deliberate intent, negligent acts or omissions.

- 18.4 The Consultant shall comply with all statutory obligations and Council and Government policies (including but not limited to the Council's Safeguarding Policy, Safeguarding Guidance for Providers and the South West Safeguarding Procedures) in respect of safeguarding as applicable and amended from time to time. The Consultant acknowledges and agrees that any change to any such safeguarding requirement or policy shall not constitute a Variation for the purposes of this Contract and, accordingly, shall be implemented and complied with by the Consultant at its own cost and risk.
- 18.5 The Consultant shall immediately notify the Council of and provide the Council with any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 18 have been met.
- 18.6 The Consultant must comply with any instruction given by the Council in respect of this Clause 18.

Whistleblowing

- 18.7 The Consultant's safeguarding policies and procedures shall refer to a comprehensive whistleblowing policy and staff shall be actively encouraged to use the whistleblowing policy to report suspected abuse or breach of the safeguarding requirements expected of the Consultant under this Contract.
- 18.8 The Consultant shall not take any action against any member of staff where such member of staff has in accordance with the process provided pursuant to clause 18.7 and in good faith reported alleged malpractice on the part of the Consultant.

19. GRATUITIES

The Consultant shall not, whether itself, or by any person employed by it to provide the Consultancy Services, solicit or accept any gratuity or any other reward, tip or any other form of money taking, collection or charge for any part of the Consultancy Services other than charges properly approved by the Council in accordance with the provisions of this Agreement.

20. NOTICES

20.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:

(a) 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).

20.2 Any notice or communication shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

(b) 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.

20.3 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.

21. DISPUTE RESOLUTION

21.1 Any disputes or differences arising between the Parties in respect of the construction or effect of the Agreement, or the rights, duties and liabilities of the Parties hereunder, or any matter or event connected with or arising out of the Agreement shall be resolved by the Parties negotiating in good faith.

- 21.2 In the absence of resolution in accordance with Clause 21.1 above the dispute may be referred by the Agreement of both Parties to a single mediator to be appointed in accordance with the mediation procedures of the Centre for Effective Dispute Resolution (CEDR) Model Mediation procedure 2001 or such later edition as may be in force from time to time or such other organisation which provides mediation services. The mediator shall be agreed upon by the Parties.
- 21.3 All costs of mediation shall be borne equally by the Parties unless otherwise directed by the mediator.
- 21.4 The submission of either Party to Clause 21.2 above shall not limit their right to commence any proceedings in any court of competent jurisdiction in England and Wales.

22. LEGAL PROCEEDINGS

- 22.1 The Consultant shall notify the Council's Representative immediately upon becoming aware of any accident, damage or breach of any statutory provision relating in any way to the provision of or connected with the Consultancy Services.
- 22.2 If requested to do so by the Council's Representative, the Consultant shall provide the Council's Representative with any relevant information in connection with any litigation, arbitration or other dispute in which the Council may become involved or any relevant disciplinary hearing internal to the Council and shall give evidence in such inquiries or proceedings or hearings, arising out of the provision of the Consultancy Services.
- 22.3 The Consultant shall at its own reasonable expense fully assist the Commission for Local Administration in England, the Audit Commission, the District Auditor, the Council's Internal Auditor, the Cornwall Council's

Monitoring Officer and any other body or person as may be specified by the Council's Representative with any investigations, enquiries or complaints relating to allegations of maladministration or other irregularities or improprieties in connection either directly or indirectly with the Agreement such assistance to include the prompt disclosure to such body or person as aforesaid of all relevant information and documentation.

- 22.4 Should any part of the Consultancy Services involve the Consultant in performing duties or exercising powers under some other contract it shall upon becoming aware of anything which is likely to give rise to arbitration or litigation under that other contract forthwith notify the Council's Representative of any such matter together with such particulars as are available.

23. ENTIRE AGREEMENT

- 23.1 This Agreement 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.
- 23.2 Each party acknowledges that in entering into this Agreement 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 Agreement.
- 23.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 23.4 Nothing in this clause shall limit or exclude any liability for fraud.

24. VARIATION

- 24.1 No variation of this Agreement 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).

25. COUNTERPARTS

- 25.1 This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

26. THIRD PARTY RIGHTS

- 26.1 Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 26.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

27. FORCE MAJEURE

- 27.1 Either Party reserves the right to defer the date of delivery or payment or cancel the Agreement or reduce the provision of the Consultancy Services if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Council including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, fire, explosion, flood, epidemic,

lockouts, strikes or other labour disputes (whether or not relating to either party's workforce) or restraints or delays affecting carriers or inability or delay in obtaining supplies or adequate or suitable materials.

- 27.2 If the performance of a Party's obligations under the Agreement is in the opinion of that Party likely to be hindered, delayed or affected by a reason falling within Clause 27.1 the Party so affected shall promptly notify the other Party in writing of that fact. If such circumstances continue for a continuous period of more than 1 month, either Party may terminate the Agreement by written notice to the other Party.

28. RECOVERY OF SUMS DUE TO THE COUNCIL

Whenever under the Agreement any sum of money shall be recoverable from or payable by the Consultant to the Council the same may be deducted from any sum then due or which at any time thereafter may become due to the Consultant under this Agreement or any other Agreement with the Council.

29. ASSIGNMENT AND SUBCONTRACTING

- 29.1 The Council shall be entitled to assign the benefit of the Agreement or any part thereof and shall give written notice of any assignment to the Consultant.

- 29.2 The Consultant shall not:

29.2.1 assign the Agreement or any part thereof or the benefit or advantage of the Agreement of any part thereof;

29.2.2 sub-contract the provision of the Consultancy Services or any part thereof to any person without the previous written consent of the Council, which consent shall be at the absolute discretion of the

Council and if given shall not relieve the Consultant from any liability or obligation under the Agreement and the Consultant shall be responsible for the acts, defaults or negligence of any sub-contractor or sub-contractor's agents or employees in all respects as if they were the acts, defaults or negligence of the Consultant or the Consultant's agents, or employees.

30. GOVERNING LAW

This Agreement 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.

31. JURISDICTION

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 Agreement or its subject matter or formation (including non-contractual disputes or claims).

32. ELECTRONIC SIGNATURES

Each Party agrees to sign this Agreement by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of our intention to be bound by this Agreement as if signed by each Party's manuscript signature.

IN WITNESS whereof this Agreement has been signed by the Parties hereto and is intended to be and is hereby delivered on the day and year first above written.

SIGNED on behalf of)

THE CORNWALL COUNCIL)

.....

Authorised Officer

Print Name:

SIGNED for and on behalf of)

[])

acting by:)

.....

Director

Print Name:

SCHEDULE 1 – SPECIFICATION

SCHEDULE 2 – FEES

The total Fees payable to the Consultant shall not exceed the figures set out in this Schedule 2.

The Consultant shall submit **X** individual invoices in arrears upon completion of each of the deliverables shown in the table below.

The total Fee payable for the Consultancy Services is calculated as follows:

SCHEDULE 3 - REPRESENTATIVES

Council:

Name:

Address: New County Hall, Truro, TR1 3AY

Email:

Telephone:

Consultant:

Name:

Address:

Email:

Telephone:

SCHEDULE 4
CONSULTANT SUBMISSION AND RESPONSE TO BRIEF