

TERMS AND CONDITIONS

SOUTHEND-ON-SEA BOROUGH COUNCIL

South Essex Cycling and Walking Network Review

SERVICE TERMS AND CONDITIONS

THIS AGREEMENT made XXXXX

BETWEEN:

- (1) XXXXXX
- (2) SOUTHEND ON SEA BOROUGH COUNCIL of PO Box Civic Centre, Victoria Avenue, Southend-on-Sea, Essex SS2 6FY (hereinafter referred to as the 'The Council ').

1 GENERAL

- 1.1 These Terms and Conditions together with The Council's project specification, Consultant's proposal and any other relevant document or plan, constitute the contract between the Parties for the Project ("the Contract").
- 1.2 In providing services to The Council , the Consultant will work at all times:
 - a) in accordance with the specification ;
 - b) with reasonable skill, care and diligence;
 - c) to the reasonable satisfaction of The Council ;
 - d) with appropriate skills and qualifications.
- 1.3 The Consultant will indemnify The Council and hold The Council harmless against all costs, claims, demands and liabilities arising out of or consequent upon any breach of this obligation, including, but not limited to, design warranty of any designed organisational change process. Furthermore (but without prejudice to the undertaking and indemnity given in the two previous sentences), the Consultant will obtain adequate professional indemnity cover for all work done by them under this Agreement, and will provide The Council with a copy of the policy on request. Insurance to be held is Employers Liability to £5m (million), Public Liability to £5m (million) and Professional Indemnity to £2m (million) on a per occurrence/claim basis.
- 1.4 The Consultant shall disclose to The Council any actual or potential conflict of interest arising from the Project as soon as is reasonably practicable after becoming aware of the conflict. If the Parties are unable to resolve the conflict to the reasonable satisfaction of The Council, The Council shall be entitled to terminate the Contract with immediate effect.

2 LOCATION

- 2.1 The Consultant will provide the contracted services at The Council offices in Southend and from their own premises as agreed with The Council.
- 2.2 Whenever the Consultant works on The Council's premises, the Consultant will ensure their compliance with the Health and Safety at Work Act and with The Council's fire and safety rules and procedures.

3 PAYMENT

- 3.1 The Council shall pay the Consultant within 30 days of receipt and agreement of invoices, for work completed to the satisfaction of The Council.
- 3.2 In addition to the Price, The Council shall pay the Consultant a sum equivalent to any Value Added Tax chargeable in respect of the Project if VAT is due and the Consultant provides a valid tax reference. Value Added Tax shall be shown as a separate item on the Consultant's invoice.
- 3.3 The Consultant shall be entirely responsible for the payment of all and any income tax, national insurance contributions and any similar liabilities on any Fees earned under this Contract.
- 3.4 No expenses will be incurred in the carrying out of the Project unless expressly agreed by The Council and will be on The Council's expenses policy.

4 CONFIDENTIALITY

- 4.1 Except in so far as such matters are properly in, or come into, the public domain, the Consultant agrees to keep secret and confidential all matters contained in or arising from this Agreement or relating to the study and affairs of The Council, and not to disclose any such confidential information to any person unless otherwise expressly provided by this Agreement, or unless he or she is ordered to do so by a Court of competent jurisdiction.

5 RELATIONSHIP BETWEEN THE PARTIES

- 5.1 The relationship of the Consultant to The Council shall be that of independent Consultant; and at no time shall an employee of the Consultant hold himself or herself out as being an employee of The Council.
- 5.2 Save as expressly specified in writing, the Consultant (or employee) shall not hold himself or herself out as the agent of The Council, and shall not have any authority to act on behalf of The Council, to conclude any contracts or incur any obligation or liability on behalf of or binding upon The Council, or to sign any document on The Council's behalf.

6 ASSIGNMENT OF INTEREST

- 6.1 The Consultant may not sub-licence, assign, transfer or part with this Agreement or any of his or her rights, duties or obligations under this Agreement.
- 6.2 The Council has the right to exclude or deny access to its premises to the Consultant.

7 TERM AND TERMINATION

- 7.1 Subject to Clause 7.2, this Agreement shall continue until the contracted end date stated in Schedule1.

- 7.2 Notwithstanding Clause 7.1, The Council shall be entitled to terminate this Agreement with immediate effect and without any compensation or damages due to The Council, but without prejudice to any other rights or remedies The Council may have, if the Consultant should:
- a) commit a serious breach of the terms of this Agreement which they fail to remedy within seven days of receipt of written notice from The Council specifying the breach and requesting remedy;
 - b) persistently neglect, fail or refuse for whatever reason to perform to the satisfaction of The Council the services which are to be provided under this Agreement;
 - c) act in any way materially contrary to the interests of The Council whilst providing or purporting to provide the services under this Agreement;
 - d) the Consultant passes a resolution, or the Court makes an order that the Consultant be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the Consultant is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.
- 7.3 In the event of the termination of this Agreement under Clause 7.2 the Council shall only be liable to the Consultant in respect of fees and expenses in accordance with the terms of this Agreement for the services provided by the Consultant up to the effective date of termination.
- 7.4 On the termination of this Agreement (however arising), the Consultant shall deliver up to The Council all documents, papers, data, specifications, reports and notes which were furnished by The Council to the Consultant or which were prepared by or on behalf of the Consultant for The Council in the course of providing services under this Agreement.
- 7.5 The obligations of the parties under Clauses 4 and 5 shall survive the termination of this Agreement (for whatever reason).

8 INTELLECTUAL PROPERTY

- 8.1 All Intellectual Property Rights (IPR) in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- a) provided to the Consultant by The Council shall remain the property of The Council;
 - b) Prepared by or for the Consultant specifically for the use, or intended use, in relation to the performance of the Contract shall belong to The Council on creation.

- 8.2 The Consultant shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party IPR. The Consultant shall procure that the owner of the IPR grant to The Council a non-exclusive perpetual and irrevocable licence for the purpose of The Council's functions and duties as a local authority; or if the Consultant is itself a licensee of those rights, the Consultant shall grant to The Council a sub-licence for the purposes mentioned. Such licence and any sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right for The Council to sub-licence, transfer, and novate or assign to other The Council s, any Replacement Consultant or to any other third party providing services to The Council, and shall be granted at no cost to The Council.
- 8.3 It is a condition of the Contract that the Services will not infringe the IPR of any third party and the Consultant shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation The Council against all Liabilities which The Council may suffer or incur as a result of or in connection with any breach of this clause or any claim of IPR infringement arising from the Services or performance of the Consultant or Consultant's Assigned Personnel.
- 8.4 At the termination of the Contract the Consultant shall immediately return to The Council all materials, work or records held in relation to the Services, including any back-up media and information relating to service users.

9 DATA PROTECTION

- 9.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule A by the Customer and may not be determined by the Contractor.
- 9.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 9.3 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- 9.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with Schedule 16, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:
 - (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 16);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

(e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

9.5 Subject to clause 9.6, the Contractor shall notify the Customer immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

9.6 The Contractor's obligation to notify under clause 9.5 shall include the provision of further information to the Customer in phases, as details become available.

9.7 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 9.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- (a) the Customer with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Customer following any Data Loss Event;
- (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.

9.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- (a) the Customer determines that the processing is not occasional;
- (b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

- (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 9.9 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 9.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 9.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
 - (a) notify the Customer in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Customer;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause [9] such that they apply to the Sub-processor; and
 - (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 9.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 9.13 The Contractor may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 9.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

10 FREEDOM OF INFORMATION

- 10.1 The Council is subject to the FOIA and the EIR ("the Acts"). As part of The Council's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts.
- 10.2 The Consultant shall assist and cooperate with The Council (at the Consultant's expense) to enable The Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by The Council .

11 MISCELLANEOUS

- 11.1 Clause headings are inserted in this Agreement for convenience only, and they shall not be taken into account in the interpretation of this Agreement.

