**THIS AGREEMENT** dated day of 2016

**Schedule 2**

**BETWEEN**

1. **CHELTENHAM BOROUGH COUNCIL**  of   the Municipal Offices Promenade Cheltenham Gloucestershire GL50 9SA (“the Council”)

and

1. whose registered office is situated at       (“the Consultant”)

### WHEREAS

1. The Council wishes to have provided by way of a consultancy services arrangement lead consultant services for the redevelopment of Cakebridge Place in the Borough of Cheltenham upon the terms and conditions contained herein
2. The consultancy services to be provided upon the terms and conditions contained herein is as set out in the Brief to the Consultant (“the Brief”) which is annexed hereto
3. Following a tender process the Council appointed the Consultant to provide the Consultancy Services on the basis of their tender (“the Tender”) which is annexed hereto and upon the terms and conditions contained in this Agreement
4. The Brief and the Tender taken together form the consultancy services to be provided by the Consultant (“the Consultancy Services”).
5. The Council and the Consultant have agreed to enter into this Agreement for the purpose of setting out all agreed terms and conditions and which are evidenced by the documents annexed hereto

**IT IS AGREED AS FOLLOWS:**

1. **Consultancy**
   1. The Council appoints the Consultant to undertake carry out produce provide and deliver to the Council and the Consultant agrees to undertake carry out produce provide and deliver to the Council the Consultancy Services in accordance with the terms of this Agreement and within the time stated in this Agreement
   2. In providing the Consultancy Services to the Council the Consultant will act and perform and supply advice data and materials with reasonable skill care and diligence in accordance with this Agreement and any legislation, guidance and good practice which affects the performance of any obligation under this Agreement. 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. Furthermore (but without prejudice to the undertaking and indemnity given in the two previous sentences) the Consultant will obtain adequate professional indemnity (including but not necessarily limited to Employers’ Liability Public Liability Products Liability Personal Indemnity) cover for all work to be undertaken by the Consultant under this Agreement and will provide the Council with a copy of the policies upon request
   3. The Consultant warrants that persons carrying out the Consultancy Project shall have the necessary skill and expertise required to be able to undertake the Consultancy Project in accordance with the terms of this Agreement
   4. The Consultant shall promptly communicate in confidence to the Council all ideas generated work done results produced and or made in undertaking the Consultancy Project ("the Results"). The Consultant shall not without prior written consent of the Council use or disclose to any other person or organisation either during or after the termination of this Agreement any of the Results
   5. It has been agreed that the Consultancy Services will be undertaken carried out provided and delivered to the Council for a fixed fee of £      (excluding VAT) including expenses
   6. The ambit of the Consultancy Services the dates for the provision of elements of the Consultancy Services and the Contract Sum may be amended from time to time but such amendment will only take effect upon written confirmation to be provided by an authorised officer of the Council to the Consultant
   7. This Agreement shall commence on       day of       2016 and the work shall be completed on or before       day of       20
   8. If there is any inconsistency between the provisions of the Tender on the one hand and the Brief and this Agreement on the other hand the Brief and this Agreement shall prevail
   9. The Consultant shall ensure compliance with The Construction (Design and Management) Regulations 2015 (“CDM Regulations”) and any associated guidance and good practice when carrying out its obligations set out in this Agreement.
   10. The Consultant shall be appointed as the Principal Designer for the purposes of the CDM Regulations and will perform all functions and duties required of a Principal Designer under the CDM Regulations and any associated guidance and good practice.
2. **Entire Agreement**

2.1 This Agreement is comprised of the clauses and the schedules contained herein and sets out the entire agreement of the parties relating to the Consultancy Services and supersedes all prior agreements and understandings relating to its subject matter

1. **Location**

3.1 The Consultant will provide the Consultancy Services or deliver the product of the Consultancy Services in or to such places as the Council may reasonably specify. Whenever the Consultant or the Consultant’s staff servants or agents work on Council premises the Consultant will ensure their compliance with all relevant legislation including (but not limited to) the Health and Safety at Work etc. Act, the Equalities Act 2010, with the Council’s fire and safety rules and procedures and any other reasonable requests.

1. **Remuneration and expenses**
   1. In consideration of the Consultancy Services to be provided by the Consultant in accordance with the provisions, requirements and the terms of this Agreement the Council will pay the sums described in clauses 1.5 and 1.6 above
   2. The Council will pay any undisputed fee and expenses described above on submission of an itemised schedule showing the amount due together with copies of individual receipts in respect of all expenses claimed and a tax invoice pursuant to clause 4.3 within 30 days of receipt and agreement of invoice
   3. Where the Council is obliged to make a payment to the Consultant under this Agreement which attracts VAT (or any tax replacing it) the Council shall be responsible for paying such VAT (or the tax replacing it) and the Consultant shall supply the Council with an appropriate tax invoice
   4. Wherever under this Agreement any sum of money is recoverable from or payable by the Consultant, that sum may be deducted from any sum then due, or which at any later time may become due, to the Consultant under this Agreement or under any other agreement or contract with the Council.
2. **Confidentiality**
   1. Without prejudice to the requirements the Data Protection Act 1998, Freedom of Information Act 2000 and the Council’s other information disclosure requirements set out herein and 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 materials plans drawings and all other information contained in or arising from this Agreement or relating to the Consultancy Services and affairs of the Council. Further the Consultant agrees 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
   2. The Consultant shall at all times during the term of their appointment and for a period of 7 years after the practical completion of the Consultancy Services keep secure and or make available for inspection and or copying by the Council its internal auditors, the Local Government Ombudsman and the District Auditor all the original and or copy records documents confidential information statements and papers which may be acquired or produced by the Consultant or any permitted sub-Consultant in the performance of the Consultancy Services
3. **Data protection and Freedom of Information**
   1. The Consultant’s attention is hereby drawn to the Data Protection Act 1998 and any legislation and/or regulations implementing them or made in pursuance of them and any associated legislation that arises in connection with the Consultancy Services
   2. The parties warrant that they will duly observe all their obligations under the Data Protection Act 1998. Both parties shall have regard to and take into consideration any codes of practice or other relevant guidance issued under such legislation
   3. The Consultant acknowledges that the Council is subject to the requirements of the Code of Practice on Access to Government Information the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and the Governments Transparency agenda (all as may be amended from time to time)
   4. The Consultant shall assist the Council at no additional charge in meeting any reasonable requests for information in relation to the Consultancy Services which are made to the Council in connection with the above legislation or agenda or any statutory modification or re-enactment thereof or any related guidelines or codes of practice. The Council may from time to time serve on the Consultant an Information Notice requiring the Consultant within such time and in such form as is specified in the Information Notice to furnish to the Council such information as the Council may reasonably require relating to such requests for information
   5. The Consultant acknowledges that in responding to requests for information described in Clause 6.4 the Council shall be entitled to provide information relating to this Agreement. The Council shall not in responding to such requests for information disclose any information which it is not obliged to disclose pursuant to any provision of the above legislation or to any other relevant legislative and or regulatory provision
   6. The Consultant hereby gives his consent for the Council to publish this Agreement in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 redacted) including from time to time agreed changes to this Agreement, to the general public
4. **Relationship between the parties**
   1. The relationship of the Consultant to the Council shall be that of independent Consultant and at no time shall the Consultant his or her servants or agents hold himself or herself out as being an employee of the Council
   2. Save as expressly specified in writing the Consultant his or her servants or agents 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
   3. Subject to clause 4.3 the Consultant shall be wholly responsible for all taxes and National Insurance and other contributions which may be payable out of or as a result of the receipt of any fees or other monies paid or payable by the Council under this Agreement
5. **Assignment of interest and sub-contracting**
   1. The Consultant may not assign transfer sub-licence sub-contract delegate or otherwise part with this Agreement or any of his or her rights duties or obligations under this Agreement without prior written consent from the Council which consent (if given) shall not relieve the Consultant from any liability or obligations under this Agreement. However the Consultant is free to employ such secretarial and other assistance as the Consultant shall consider necessary in order to provide the Consultancy Services required of the Consultant under this Agreement: the Consultant will procure and enforce the written agreement of such employees servants or agents to comply with the terms of this Agreement
   2. The Consultant shall be responsible and liable for the acts defaults or neglect of any sub-Consultant its servants or agents or its personnel in all respects as if they were the acts defaults or neglect of the Consultant. Such responsibility and liability does arise notwithstanding that the Council may require as a condition of giving any consent to sub-contract a direct agreement warranty and undertaking from the sub-Consultant concerning the provision of the Consultancy Services and compliance with this Agreement
6. **Term and termination**
   1. The Consultant shall use all reasonable endeavours to complete the Consultancy Services expeditiously and in accordance with any and all milestone dates agreed at the date of this Agreement and / or to be agreed between the parties. Any such later agreement will only take effect upon written confirmation to be provided by an authorised officer of the Council to the Consultant
   2. Notwithstanding clause 9.1 the Council shall be entitled to terminate this Agreement with immediate effect and without any compensation or damages due to the Consultant but without prejudice to any other rights or remedies the Council may have if the Consultant should
7. commit a serious breach of the terms of this Agreement which he or she fails to remedy within 7 days of receipt of written notice from the Council specifying the breach and requesting remedy
8. persistently neglect fail or refuse for whatever reason to perform to the satisfaction of the Council the Consultancy Services
9. act in any way materially contrary to the interests of the Council whilst providing or purporting to provide the Consultancy Services
10. become unfit to or incapable of continuing to perform the Consultancy Services under this Agreement adequately by reason of physical or mental illness or incapacity
11. being a company go into liquidation or being an individual become bankrupt have a receiving order made against him or her or make any arrangement with his or her creditors
    1. In the event of the termination of this Agreement under clause 9.2 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 satisfactory Consultancy Services provided by him or her up to the effective date of termination
    2. On the termination of this Agreement (howsoever arising) the Consultant shall deliver up to the Council all documents formulae papers drawings software data specifications reports notes programs portfolios equipment information and materials of any sort identity cards and keys 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 Consultancy Services
    3. The obligations of the parties under clauses 5 6 7 and 8 shall survive the termination of this Agreement (for whatever reason)
12. **Intellectual Property Rights**

10.1 The Consultant shall ensure that the Project will not infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial property of any third party and the Consultant shall indemnify the Council against all actions, claims, demands, costs and expenses which the Council may suffer.

10.2 All rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patents, models, designs or other materials:

(a) furnished to or made available to the Consultant by the Council are hereby assigned to and shall vest in the Council

(b) prepared by or for the Consultant for use, or intended use, in relation to the performance of this Agreement are hereby assigned to and shall vest in the Council absolutely, and the Consultant shall not and shall procure that his servants and agents shall not (except to the extent necessary for the implementation of this Agreement) without prior written consent of the Council use or disclose any such specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to this Agreement) which the Consultant may obtain pursuant to or by reason of this Agreement, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Consultant shall not refer to the Council or this Agreement in any advertisement without the Council‘s prior written consent.

10.3 The provisions of this Clause 10 shall apply during the continuance of this Agreement and after its termination howsoever arising.

1. **Force Majeure**
   1. The Consultant shall not be liable under or deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond its reasonable control including without limitation any delays or failures by the Council to give adequate instructions or approvals
2. **Insurance**
   1. In accordance with clause 1.2 herein the Consultant shall throughout the term of the appointment maintain with an insurance company to be approved in writing by the Council :
      1. Public Liability and Employers Liability in the sum of £5 million for any one occurrence or series of occurrences arising out of one event number of occurrences to be unlimited and/or
      2. Professional Indemnity insurance in the sum of £5 million during this Agreement period and for 6 years to cover its liability to the Council under this Agreement and shall at the request of the Council produce written evidence of such insurance policy or policies for inspection by the Council

**13. Prevention of Corruption**

13.1 The Consultant shall comply with applicable Bribery Laws, including ensuring that it has in place adequate procedures to ensure compliance with the Bribery Laws and prevent bribery and use all reasonable endeavours to ensure that it complies with any Council Policies relating to the prevention of bribery and corruption (as updated from time to time), and shall use all reasonable endeavours to ensure that:

(a) all of the Consultant’s personnel,

(b) all others associated with the Consultant, and

1. all of the Consultant’s subcontractors,

involved in performing the Consultancy Services or with this Agreement so comply. The expressions 'adequate procedures' and 'associated' shall be construed in accordance with the Bribery Act 2010 and documents published under it.

* 1. Without limitation to the above sub-clause, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
  2. Where the Consultant or Consultant’s employees servants sub-Consultants suppliers or agents or anyone acting on the Consultant’s behalf engages in conduct prohibited by Clauses 13.1 or 13.2 in relation to this or any other contract with the Council the Council has the right to

(a) terminate this Agreement and recover from the Consultant the amount of any loss suffered by the Council resulting from the termination or

(b) recover in full from the Consultant any other loss sustained by the Council in consequence of any breach of this Condition whether or not this Agreement has been terminated

**14. Non-discrimination**

14.1 The Consultant shall use reasonable endeavours to ensure that they comply with the Equality Act 2010;

14.2. The Consultant agrees to provide the Service in a non-discriminatory manner and shall promote equality following any code of practices issued under any of the above legislation.

14.3. The Council has a responsibility to monitor the equality of the provision of any services provided by the Council. To assist the Council to meet this responsibility, the Consultant agrees, where appropriate and practicable, to work towards providing monitoring information to the Council in relation to employment and service provision in respect of the protected characteristics under the Equality Act 2010

14.4. The Consultant shall not discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of the protected characteristics.

14.5. The Consultant shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Consultant under the above legislation.

14.5.1 Where any investigation is undertaken by a person or body empowered to conduct such investigation, and/or proceedings are instituted in connection with any matter relating to the Consultant’s performance of this Agreement being in contravention of the above legislation, the Consultant shall, free of charge, co-operate fully and promptly in every way required by the person or body conducting such investigation.

14.5.2 Where any such investigation is conducted or proceedings are brought under the above legislation, which arise directly or indirectly out of any act or omission of the Consultant, its agents or subcontractors, or the staff of the Consultant, and where there is a finding against the Consultant in such investigation or proceedings, the Consultant shall indemnify the Council in respect to all costs, charges and expenses arising out of or in connection with any such investigation or proceedings to cover any costs or payment the Council may have been ordered or required to pay to a third party.

14.6 In order for the Council to monitor discrimination and promote equalities and diversity in all its functions and policies, the Council may require the Consultant to complete a questionnaire and/or provide information to the Council on the extent and quality of the Consultant’s equalities and diversity policies and practice.

If the Consultant fails to meet the required standards set out in the above legislation or codes of practice and after having been given the opportunity to improve the Council may take further action, including the termination of this Agreement.

14.7. The Consultant shall impose similar obligations contained in this clause in any subcontracts that it may enter into in relation to the provision of the Consultancy Services under this Agreement.

**15. Dispute Resolution**

15.1 In the case of any dispute before resorting to legal proceedings the parties shall attempt to settle in good faith all disputes or differences which arise between them out of or in connection with this agreement by negotiations between them in good faith and in the event of failure of such negotiations by the use of the procedure known as Alternative Dispute Resolution (“ADR”)

15.2 Where failure of negotiations in respect of such a dispute or difference occurs the parties shall together refer such dispute or difference to the Centre for Effective Dispute Resolution (“CEDR”) for resolution in accordance with such of the ADR procedures offered by CEDR as CEDR considers appropriate in all the circumstances

15.3 The parties agree to be bound by the relevant rules of CEDR relating to the conduct of the relevant ADR proceedings as if the same were incorporated into this agreement. Each party shall bear its own costs incurred in the relevant ADR proceedings and one half of the fees and expenses of the CEDR unless a different agreement is reached as part of any settlement arrived at as a result of the relevant ADR proceedings

**16. Miscellaneous**

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

16.2 This Agreement cancels and is in substitution for all previous letters and oral and written agreements relating to the subject-matter of this Agreement between the Council or any of its officers and the Consultant all of which shall be deemed to have been terminated by mutual consent

16.3 If any provision of this Agreement shall be held void or unenforceable in whole or part by any court other competent authority the remaining provisions and the remainder of the provisions affected shall remain in full force and effect

16.4 All notices or other communications to be served on either party under this Agreement shall be sent by pre-paid first-class post to the address shown above and shall be deemed served 48 hours after posting unless the contrary is proved

16.5 No person who is not a Party to this Agreement (including without limitation any employee officer agent representative or sub-Consultant of either the Council or the Consultant) shall have any right to enforce any term of this Agreement which expressly or by implication confers a benefit on him without the prior agreement in writing of both Parties. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to The Contracts (Rights of Third Parties) Act 1999

16.6 Time is of the essence as regards the provision to the Council of the Consultancy Services in accordance with the requirements and provisions of the Consultancy Services and the terms of this Agreement

16.7 This Agreement is governed and to be construed in accordance with the laws of England

16.8 Any references in this Agreement to an Act of Parliament shall be deemed to include references to any subsequent legislation amending or re-enacting the same

16.9 a). The failure of either party to exercise any right or remedy shall not constitute a waiver of that right or remedy.

b.) No waiver shall be effective unless it is communicated to the other party in writing.

c). A waiver of a right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

**IN WITNESS WHEREOF** these presents have been executed by the parties hereto as a Deed and delivered on the day and year first before written

Executed as a Deed by )

THE COMMON SEAL of CHELTENHAM )

BOROUGH COUNCIL being affixed hereto and )

authenticated by the undermentioned person )

authorised by the Council to act for that purpose: )

Authorised Signatory

Executed as a deed by )

)

acting by a Director in the )

presence of: )

Name of Witness …………………………………

Signature of Witness ……………………………..

Address ……………………………………………

…………………………………………………….

……………………………………………………

DATED 2016

**CHELTENHAM BOROUGH COUNCIL**

and

**Agreement for Consultancy Services for**

Borough Solicitor and Monitoring Officer

One Legal

Tewkesbury Borough Council

Council Offices

Gloucester Road

Tewkesbury

GL20 5TT

File ref: