

**Reference Number:** NTCTOWNTEAM2022

## **Consultancy Agreement**

**between**

**Newquay Town Council**

**and**

**[Consultant]**

**in relation to**

**Newquay Town Development Framework and Investment Plan**

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**THIS AGREEMENT** is dated \_\_\_\_\_ 2022

## **PARTIES**

- (1) **Newquay Town Council**, Municipal Offices, Marcus Hill, Newquay TR7 1AF (**Council**).
- (2) [Insert name, registered number and registered address] (**Consultant**).

## **BACKGROUND**

- (A) The Consultant is in the business of providing the Services.
- (B) The Council wishes to obtain and the Consultant wishes to provide the Services on the terms set out in this agreement.

## **AGREED TERMS**

### **1. INTERPRETATION**

The following definitions and rules of interpretation apply in this agreement.

#### **1.1 Definitions**

**Achieved KPIs:** in respect of any Service in any measurement period, the standard of performance actually achieved by the Consultant in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI).

**Brief:** The Council's Specification document detailing the consultancy Services required attached at Schedule 1.

**Business Day:** a day other than a public holiday in England.

**Business Hours:** the period from 9.00 am to 5.00 pm on any Business Day.

**Consultant's Manager:** the Consultant's manager for the Services appointed under clause 3.3

**Consultant's Team:** the Consultant's Manager and all employees, consultants, agents, sub consultants and subcontractors which it engages in relation to the Services and who are appointed under clause 3.3.

**Consultant's Party:** the Consultant's agents and contractors, including each Sub-Contractor and Sub-Consultant.

**Consultant's Personnel:** all employees, staff, other workers, agents and consultants of the Consultant and of any Sub-Contractors and Sub-Consultants who are engaged in the provision of the Services from time to time.

**Council's Manager:** the Council's manager appointed under clause 4.

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer:** take the meaning given in the GDPR.

**Data Protection Legislation:** (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 subject to Royal

Assent to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

**Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

**Data Subject Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**DPA 2018:** Data Protection Act 2018.

**Deliverables:** all Documents, products and materials developed by the Consultant or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and Briefs (including drafts).

**Document:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**GDPR:** the General Data Protection Regulation (Regulation (EU) 2016/679).

**In-put Material:** all Documents, information and materials provided by the Council relating to the Services.

**Key personnel:** Consultants employees identified in Schedule 4.

**KPIs:** the key performance indicators set out in Schedule 3.

**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.

**Milestones:** a date by which a part of the Services is to be completed, as set out in the Brief.

**Regulated Activity:** in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

**Regulated Activity Provider:** shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

**Services:** the services to be provided by the Consultant under this agreement, as set out in the Brief and the Consultant's obligations under this agreement.

**Sub-Contract:** any contract or agreement, or proposed contract or agreement, between the Consultant and a third party pursuant to which that third party agrees to provide to the Consultant, the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services.

**Sub-Contractor:** the third parties that enter into a Sub-Contract with the Consultant, which shall include Sub-Consultants.

**Sub-Consultant:** the Consultant enters into a Sub-Contract with the Consultant.

**Submission:** the Consultants tender submission set out at Schedule 2

**Fee Proposal:** the Consultants fee proposal provided as part of its tender submission set out at Schedule 2.

**Target KPI:** the minimum level of performance for a KPI which is required by the Council as set out against the relevant KPI.

**VAT:** value added tax chargeable under the Value Added Tax Act 1994.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Schedules, Tender and Brief 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, Tender and Brief.

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.9 This agreement shall be binding on, and endure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.10 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. It is in force as at the date of this agreement.

1.11 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.12 A reference to **writing** or **written** includes email.

1.13 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.14 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

1.15 References to clauses and Schedules are to the clauses and Schedules of this agreement, the RFQ and/or the Brief and references to paragraphs are to paragraphs of the relevant Schedule, RFQ and/or the Brief.

1.16 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. COMMENCEMENT AND DURATION**

2.1 The Consultant shall provide the Services to the Council in accordance with this agreement.

2.2 The Consultant shall commence the Services from [TBC but anticipated to be 04 April 2022]

2.3 The Services supplied under this agreement shall continue to be supplied for a period of 6 months (Initial Period) unless this agreement is terminated in accordance with clause 18.

2.4 The Authority may extend this agreement by 1 additional period of up to 3 months ('Extension Period'). Provided that the total duration of the contract, including Extension Periods, does not extend beyond 9 months. Any period of extension shall be agreed between the parties and recorded in writing.

### **3. CONSULTANT'S RESPONSIBILITIES**

3.1 The Consultant shall provide the Services and deliver the Deliverables to the Council in accordance with the Brief and shall allocate sufficient resources to the Services to enable it to comply with this obligation.

3.2 The Consultant shall meet any performance dates or Milestones specified in the Brief. If the Consultant fails to do so, the Council may (without prejudice to any other rights it may have):

- (a) terminate this agreement in whole or in part without liability to the Consultant;
- (b) refuse to accept any subsequent performance of the Services which the Consultant attempts to make;
- (c) purchase substitute services from elsewhere and reclaim the costs for procuring those new services from the Consultant; and
- (d) hold the Consultant accountable for any loss and additional costs incurred.

3.3 The Consultant shall:

- (a) co-operate with the Council in all matters relating to the Services;
- (b) procure the availability of the Consultant's Manager and Consultant's Team to provide the Services on such days, and at such times, as the Council may require during the term of this agreement;
- (c) promptly inform the Council of the absence (or anticipated absence) of the Consultant's Manager, or any member of the Consultant's Team. If the Council requires, the Consultant shall provide a suitably qualified replacement;
- (d) Obtain written permission from the Council for any proposed changes and not make any changes to the Consultant's Manager or the Consultant's Team without the prior written approval of the Council (such approval not to be unreasonably withheld or delayed);
- (e) Obtain written permission from the Council prior to appointing any sub-consultant and not to make any changes or appointment to any sub-consultants with the prior written approval of the Council.
- (f) ensure that the Consultant's Team use reasonable skill and care in the performance of the Services;
- (g) comply with the provisions of Schedule 3 in respect of KPI's; and
- (h) comply with the provisions of Schedule 4 in respect of Key Personnel;

- (i) comply with the provisions of Schedule 5 – Audit; and
- (j) comply with the provisions of Schedule 6 - Safeguarding

3.4 The Consultant shall:

- (a) observe, and ensure that the Consultant's Team observe, all health and safety rules and regulations and any other security requirements that apply at the Council's. The Council reserves the right to refuse the Consultant's Team access to the Council's premises, which shall only be given to the extent necessary for the performance of the Services;
- (b) notify the Council as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
- (c) before the date on which the Services are to start, obtain, and at all times maintain during the term of this agreement, all necessary licences and consents and comply with all relevant legislation in relation to:
  - (i) the Services
  - (ii) the use of In-put Material;
  - (iii) the use of all Documents, information and materials provided by the Consultant relating to the Services which existed prior to the commencement of this agreement, including computer programs, data, and reports.

3.5 The Consultant acknowledges and agrees that:

- (a) the Council is entering into this agreement on the basis of the Brief and that it is accurate and complete in all material respects, and is not misleading; and
- (b) if it considers that the Council is not, or may not, be complying with any of the Council's obligations, it shall only be entitled to rely on this as relieving the Consultant's performance under this agreement:
  - (i) to the extent that it restricts or precludes performance of the Services by the Consultant; and
  - (ii) if the Consultant, promptly after the actual or potential non-compliance has come to its attention, has notified details to the Council in writing.

**4. SUB-CONTRACTING**

4.1 Subject to clause 4.3, neither party shall assign, novate, subcontract, appoint sub-consultants or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Consultant appoint sub-consultants or sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority, such consent not to be unreasonably withheld.

4.2 In the event that the Consultant enters into any Sub-Contract in connection with this agreement it shall:

- (a) remain responsible to the Authority for the performance of all its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors, including without limitation failure to comply with health and safety legislation, laws, regulations and codes;
- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.

4.3 The Authority shall be entitled to novate (and the Consultant shall be deemed to consent to any such novation) the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

4.4 Provided that the Authority has given prior written consent, the Contractor shall be entitled to novate the agreement where:

- (a) the specific change in contractor was provided for in the procurement process for the award of this agreement;
- (b) there has been a universal or partial succession into the position of the Contractor, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

## **5. KEY PERFORMANCE INDICATORS**

5.1 The Consultant shall comply with the Key Performance Indicators (KPIs) set out at Schedule 3.

5.2 Performance against the KPIs will be monitored bi-weekly at contract review meetings.

5.3 If the Consultant fails to achieve the Target KPI set out the KPIs the Council shall issue an improvement notice which shall set out details of the Consultant's failures in addition to seeking the Consultant to improve their performance within 14 (fourteen) days.

5.4 If following an improvement notice sent in accordance with clause 5.3 above, the Consultant continues to fail to achieve the Target KPI the Council shall be entitled to rely on clause 18.3(d).

## **6. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

The Parties agree that the provisions of Schedule 6 shall apply to the Consultants, the Consultants Personnel, the Consultants Team, Sub-Contractors and any Sub-Consultants.

## **7. NOT USED**

## **8. COUNCIL'S OBLIGATIONS**

The Council shall:

- (a) co-operate with the Consultant in all matters relating to the Services and appoint the Council's Manager who shall have the power to contractually bind the Council on matters relating to the Services;
- (b) provide access to the Council's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Consultant and agreed with the Council in writing in advance, for the purposes of the Services ; and
- (c) provide the In-put Material and such information as the Consultant may reasonably request and the Council considers reasonably necessary, in order to carry out the Services in a timely manner, and ensure that it is accurate in all material respects;

## **9. CHARGES AND PAYMENT**

9.1 In consideration of the provision of the Services by the Consultant, the Council shall pay the charges as set out in the Consultants submission/fee proposal agreed by the Council.

9.2 Services are provided for a fixed price:

- (a) The total price for the Services shall be the amount set out in the Consultants submission/ fee proposal.
- (b) The total price shall be paid to the Consultant in instalments upon meeting key Milestones set out in Schedule 1.
- (c) On achieving a Milestone in respect of which an instalment is due, the Consultant shall invoice the Council for the charges that are then payable, (and VAT, where appropriate).
- (d) Notwithstanding clause 9.2(b) the Council may, in its absolute discretion, pay an initial payment in advance. Any payment in advance will be determined by Council on award of the contract and deducted from the total price for the Service.

9.3 The fixed price fee for the Services includes the cost of hotel, subsistence, travelling and any other ancillary expenses incurred by members of the Consultant's Team and any

Sub-Consultants in connection with the Services the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Consultant for the supply of the Services. No additional disbursements may be claimed by the Consultant without express written agreement of the Council.

9.4 The Council shall pay each invoice which is properly due and submitted to it by the Consultant, within 30 days of receipt, to a bank account nominated in writing by the Consultant.

9.5 The Council shall accept and process an electronic invoice submitted by the Consultant, where it complies with the standard on electronic invoicing and is undisputed. For these purposes, an electronic invoice complies with the standard of electronic invoicing where it complies with the standard referred to in the Public Procurement (Electronic Invoices etc.) Regulations 2019 (2019/624).

9.6 If a party fails to make any payment due to the other party under this agreement by the due date for payment, then, without limiting the other party's remedies under clause 18, the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above NatWest Banks base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount.

9.7 The Council may at any time, with notice to the Consultant, set off any liability of the Consultant to the Council against any liability of the Council to the Consultant, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. If the liabilities to be set off are expressed in different currencies, the Council may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Council of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.

## **10. QUALITY OF SERVICES**

10.1 The Consultant warrants to the Council that:

- (a) the Consultant will perform the Services with the reasonable degree of care and skill and in accordance with good commercial practices and standards;
- (b) the Services will conform with all descriptions and Briefs as set out in the Brief, and
- (c) the Services and Deliverables will be provided in accordance with all applicable legislation from time to time in force, and the Consultant will inform the Council as soon as it becomes aware of any changes in that legislation.

10.2 The provisions of this clause 10 shall survive any performance, acceptance or payment pursuant to this agreement and shall extend to any substituted or remedial services provided by the Consultant.

## **11. DATA PROTECTION**

11.1 Each party is acting as an independent controller and shall (and shall procure that any of its personnel involved in the provision of the Contract shall) comply with any notification requirements under the Data Protection Act 2018 and the General Data Protection Regulations (“Data Protection Legislation”) and shall duly observe all obligations under the Data Protection Legislation which may arise in connection with this Contract.

11.2 When handling Council data, the Consultant shall do so appropriately and shall ensure the security of the data is maintained including, without limitation, in line with the Data Protection Legislation.

11.3 The Consultant shall (and shall procure that any of its Consultant personnel shall) ensure that where the provision of this Contract may require the processing of Personal Data that it shall only be done pursuant to the Data Protection Legislation and where relevant in the context of a controller – controller relationship as authorised and determined by the Council.

11.4 The Council may, at any time on not less than seven (7) days’ notice, revise this Clause 11.4 by replacing it with any applicable data protection or controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).

## **12. INTELLECTUAL PROPERTY RIGHTS**

12.1 The Consultant assigns to the Council, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services (including the Deliverables).

12.2 At its own expense, the Consultant shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this agreement, including securing for the Council all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Council in accordance with clause 12.1.

12.3 The Consultant shall obtain waivers of any moral rights in the products of the Services (including the Deliverables) to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

## **13. INDEMNITY**

13.1 The Consultant shall to the extent that a claim does not arise from the negligence or wilful default of the Council, indemnify and hold the Council harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses

(including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Council as a result of or in connection with any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services (including the Deliverables).

13.2 The Consultant shall indemnify and hold the Council harmless from all direct loss, damage, injury, cost or expense sustained by the Council's employees or agents or by any Council or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the Deliverables as a consequence of a breach or negligent performance or failure or delay in performance of this agreement by the Consultant.

#### **14. INSURANCE**

14.1 The Consultant shall maintain professional indemnity insurance for an amount of at least £2,000,000 (two million pounds) for any one occurrence or series of occurrences arising out of any one event for a period beginning on the date of this agreement and ending 24 months after the date of completion of the Project, provided that such insurance is available at commercially reasonable rates. The Consultant shall maintain that professional indemnity insurance:

- (a) with reputable insurers lawfully carrying on insurance business in the UK ;
- (b) on customary and usual terms and conditions prevailing for the time being in the insurance market; and
- (c) on terms that:
  - (i) do not require the Consultant to discharge any liability before being entitled to recover from the insurers; and
  - (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.

14.2 Any increased or additional premium required by insurers because of the Consultant's claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.

14.3 Without the Council's prior written consent, the Consultant shall not:

- (a) Settle or compromise any claim with the insurers that relates to a claim by the Council against the Consultant; or
- (b) By any act or omission lose or affect the Consultant's right to make, or proceed with, that claim against the insurers.

14.4 The Consultant shall immediately inform the Council if the Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates

and the Consultant and the Council will meet to discuss how best to protect their respective positions regarding the Project without that level of insurance, and the Consultant will outline the steps he or she intends to take to manage any risks. The parties shall use reasonable endeavours to agree a method of managing any risk. Pending the outcome of such discussions, the Consultant shall continue to maintain insurance pursuant to clause 14.1 at the next highest limit which is available in the market at commercially reasonable rates.

14.5 Whenever the Council reasonably requests, the Consultant shall send the Council evidence that the Consultant's professional indemnity insurance is in force, including, if required by the Council, an original letter from the Consultant's insurers or brokers confirming:

- (d) the Consultant's then current professional indemnity insurance; and
- (e) that the premiums for that insurance have been paid in full at the date of that letter.

14.6 The Consultant shall take out and maintain public liability insurance for an amount of at least £5,000,000 (five million pounds) for any one occurrence or series of occurrences arising out of any one event for the duration of the Services.

14.7 The Consultant shall take out and maintain employer's liability insurance for an amount of at least £5,000,000 (five million pounds) for any one occurrence or series of occurrences arising out of any one event for the duration of the Services.

## **15. CONFIDENTIALITY AND THE COUNCIL'S PROPERTY**

15.1 The Consultant undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any Input Material, technical or commercial know-how, Briefs, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Consultant by the Council, its employees, agents, consultants or subcontractors, or any other confidential information concerning the Council's business or its products which the Consultant may obtain, except as permitted by clause 15.2.

15.2 The Consultant may disclose the Council's confidential information:

- (a) to the Consultant's Team and to such of its other employees, agents, consultants or subcontractors as need to know it for the purpose of discharging the Consultant's obligations to the Council. The Consultant shall ensure that its employees, agents, consultants or subcontractors to whom it discloses the Council's confidential information comply with this clause 15; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory Council.

15.3 The Consultant shall not use the Council's confidential information for any purpose other than to perform its obligations under this agreement.

15.4 All In-put Materials, Council's Equipment and all other materials, equipment and tools, drawings, Briefs and data supplied by the Council to the Consultant shall, at all times, be and remain the exclusive property of the Council, but shall be held by the Consultant in safe custody at its own risk and maintained and kept in good condition by the Consultant until returned to the Council. They shall not be disposed of or used other than in accordance with the Council's written instructions or authorisation.

## **16. COMPLIANCE WITH LAWS AND POLICIES**

In performing its obligations under this agreement, the Consultant shall comply with all applicable laws, statutes, regulations and codes from time to time in force and the Consultant will inform the Council as soon as it becomes aware of any changes in that legislation.

## **17. LIMITATION OF LIABILITY**

17.1 Nothing in this agreement:

- (a) shall limit or exclude the Consultant's or the Council's liability for:
  - (i) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
  - (ii) fraud or fraudulent misrepresentation;
  - (iii) any other liability which cannot be limited or excluded by applicable law;or

17.2 Subject to clause 15.1 the Consultants total liability to the Customer, whether in, tort (including negligence and infringement of Third party intellectual property rights), contract, breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to two million pounds (£2,000,000).

17.3 The losses for which the Consultant assumes responsibility and which shall, be recoverable by the Council include:

- (a) sums paid by the Council to the Consultant pursuant to this agreement, in respect of any services not provided in accordance with the terms of this agreement;
- (b) wasted expenditure;
- (c) additional costs or procuring and implementing replacements for, or alternatives to, the Services including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
- (d) losses incurred by the Council arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party

(including any subcontractor, Consultant personnel, regulator or Council of the Council) against the Council caused by the act or omission of the Consultant;

17.4 The rights of the Parties under this agreement are in addition to, and not exclusive of, any rights or remedies provided by the common law.

## **18. TERMINATION**

18.1 Subject to clause 18.2 and 16.3 this agreement shall terminate automatically on completion of the Services.

18.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (f) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

- (g) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (h) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 18.2(b) to clause 18.2(h) (inclusive);
- (j) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (k) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010); or
- (l) in the case of the Council's termination right, any warranty given by the Consultant in clause 6 is found to be untrue or misleading.

**18.3** Without affecting any other right or remedy available to it, the Council may:

- (a) terminate this agreement with immediate effect by giving written notice to the Consultant if the Consultant commits a breach of clause 3 and/or clause 6;
- (b) terminate this agreement with immediate effect where the consultant commits a Consistent Failure.
- (c) terminate this agreement for convenience by giving three months' written notice;
- (d) Council may terminate this agreement with immediate effect by giving written notice to the Consultant, if the Consultant fails to achieve the Target KPI set out in Schedule 3 provided first that the Council shall first serve a notice specifying such failure and requiring such Target KPI to be achieved and such failure is not achieved within 14 (fourteen) days of the date of such notice.

## **19. CONSEQUENCES OF TERMINATION**

**19.1** On termination or expiry of this agreement, the Consultant shall immediately deliver to the Council:

- (a) all In-put Material and all copies of information and data provided by the Council to the Consultant for the purposes of this agreement. The Consultant shall certify to the Council that it has not retained any copies of In-put Material or other information or data, except for one copy which the Consultant may use for audit purposes only and subject to the confidentiality obligations in clause 15; and

- (b) all Briefs, programs (including source codes) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to the Council (to the extent that they have not already done so by virtue of clause 12.1), who shall be entitled to enter the premises of the Consultant to take possession of them.

19.2 On termination or expiry of this agreement, the following clauses shall continue in force for a period of 6 years from the said expiry or termination date: clause 122 (Intellectual property) rights, clause 13 (Indemnity), clause 15 (Confidentiality and the Council's property), clause 17 (Limitation of liability), clause 28 (Conflict), clause 39 (Governing law), clause 40 (Jurisdiction)

19.3 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## **20. REMEDIES**

If any Services are not supplied in accordance with, or the Consultant fails to comply with, any terms of this agreement, the Council shall be entitled (without prejudice to any other right or remedy) to exercise any one or more of the following rights or remedies:

- (a) to rescind this agreement; or
- (b) to refuse to accept the provision of any further Services by the Consultant and to require the immediate repayment by the Consultant of all sums previously paid by the Council to the Consultant under this agreement; or
- (c) to require the Consultant, without charge to the Council, to carry out such additional work as is necessary to correct the Consultant's failure; and
- (d) in any case, to claim such damages as it may have sustained in connection with the Consultant's breach (or breaches) of this agreement not otherwise covered by the provisions of this clause 20.

## **21. FORCE MAJEURE**

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for one week the party not affected may terminate this agreement by giving 10 days written notice to the affected party.

**22. ASSIGNMENT AND OTHER DEALINGS**

The Consultant shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

**23. VARIATION**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**24. WAIVER**

24.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

24.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**25. RIGHTS AND REMEDIES**

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**26. SEVERANCE**

26.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

26.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **27. ENTIRE AGREEMENT**

27.1 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.

27.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

## **28. CONFLICT**

If there is an inconsistency between any of the provisions of this agreement and the provisions of the Schedules, the provisions of this agreement shall prevail.

## **29. NO PARTNERSHIP OR AGENCY**

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **30. THIRD PARTY RIGHTS**

No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

## **31. NOTICES**

31.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case).

31.2 Any notice 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 Business Day delivery services, at 9.00am on the second Business Day after posting.

31.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### **32. COUNTERPARTS**

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

### **33. MULTI-TIERED DISPUTE RESOLUTION PROCEDURE**

33.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Councils Manager and the Consultants Manager shall attempt in good faith to resolve the Dispute;
- (b) if the Finance and Procurement Manager (S151 Responsible Finance Officer) of the Council and Engagement Director of the Consultant are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Chief Executive of the Council and Engagement Partner of the Consultant who shall attempt in good faith to resolve it; and
- (c) if the Chief Executive of the Council and Engagement Partner of the Consultant are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 14 days after the date of the ADR notice.

33.2 No party may commence any court proceedings under clause 40 in relation to the whole or part of the Dispute until 10 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

33.3 If the Dispute is not resolved within 7 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 7 days, or the mediation terminates before the expiration of the said period of 7 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 40 in this agreement.

### **34. CONFLICT OF INTEREST**

34.1 The Council may require the Consultant and any Sub-Consultant to sign a conflict of interest declaration, at any time, before or during the term of this Agreement. If the

Consultant or Sub-Consultant fails to sign a conflict declaration, within 5 days of a written request by the Council, such failure will be regarded as a breach of conflict of interest obligations, for which the Council may terminate the Agreement immediately upon written notice to the Consultant and/or Sub-Consultant; such termination of the Agreement shall be effective upon the receipt of such notice by the Consultant and/or Sub-Consultant.

34.2 The Consultant represents and warrants the following:

- (a) That the Consultant (and any Sub-Consultant who may be appointed) has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement.
- (b) If any such actual or potential conflict of interest arises under this Agreement, the Consultant shall immediately inform the Council in writing of such conflict.
- (c) If, in the reasonable judgment of the Council, such conflict poses a material conflict to and with the performance of the Consultant's obligations under this Agreement, then the Council may terminate the Agreement immediately upon written notice to Consultant; such termination of the Agreement shall be effective upon the receipt of such notice by the Consultant.

## **35. ANTI-BRIBERY**

35.1 The Consultant shall:

- (a) comply with all applicable laws, statutes, regulations, and codes 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) within 1 month of the date of this agreement, and if requested annually thereafter, certify to the Council in writing signed by an officer of the Consultant, compliance with this clause by the Consultant and all persons associated with it. The Consultant shall provide such supporting evidence of compliance as the Council may reasonably request.

35.2 The Consultant shall ensure that any person associated with the Consultant who is performing services in connection with this agreement does so only on the basis of a written

contract which imposes on and secures from such person terms equivalent to those imposed on the Consultant in this clause ("Relevant Terms"). The Consultant shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Council for any breach by such persons of any of the Relevant Terms.

35.3 Breach of this clause shall be deemed a material breach.

## **36. WHISTLEBLOWING**

36.1 The Consultant shall notify the Council immediately of any act or omission of any of the Council's employees, members, agents or sub-contractors which it is aware is fraudulent, dishonest, ultra vires, an abuse of process, maladministration, or negligence or otherwise contrary to the general principles of good governance.

36.2 The Consultant shall comply with the Public Interest Disclosure Act 1998 and shall establish and where necessary update from time to time, a whistleblowing procedure for its personnel encouraging personnel to report incidents of malpractice within the Consultant or the Council to the Consultant. Such procedure shall be similar in all material respects to the whistleblowing procedure operated by the Council from time to time.

36.3 The Consultant shall notify the Council in writing forthwith if any personnel invoke the whistleblowing procedure and shall provide details of the alleged malpractice. Without prejudice to any other rights which the Council may have under this Agreement, the Consultant shall comply with the Council's reasonable requirements in dealing with the alleged malpractice, where such malpractice affects the Council.

36.4 In this clause "malpractice" shall include any fraud or financial irregularity, corruption, criminal offences, failure to comply with any legal or regulatory obligation, endangering the health or safety of any individual, endangering the environment, serious misconduct or serious financial maladministration.

36.5 Breach of this clause shall be deemed a material breach.

## **37. FREEDOM OF INFORMATION**

37.1 The Consultant acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIRs"). The Consultant shall:

(a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;

(b) transfer to the Council all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

(c) provide the Council with a copy of all Information belonging to the Council requested in the Request For Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and

(d) not respond directly to a Request For Information unless authorised in writing to do so by the Council.

37.2 The Consultant acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Consultant. The Council shall take reasonable steps to notify the Consultant of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

### **38. DATA PROTECTION**

38.1 The Consultant shall (and shall procure that any of its Consultant's personnel involved in the provision of the Contract shall) comply with any notification requirements under the Data Protection Act 2018 and the General Data Protection Regulations ("Data Protection Legislation") and shall duly observe all obligations under the Data Protection Legislation which may arise in connection with this Contract.

38.2 When handling Council data, the Consultant shall do so appropriately and shall ensure the security of the data is maintained including, without limitation, in line with the Data Protection Legislation and/or the security requirements of the Council as notified to the Consultant from time to time.

38.3 Whilst it is envisaged that the Consultant shall not process any Personal Data as part of or in connection with this Contract, the Consultant shall (and shall procure that any of its Consultant personnel shall) ensure that where the provision of this Contract may require the processing of Personal Data that it shall only be done pursuant to the Data Protection Legislation and where relevant as authorised and determined by the Council.

38.4 The Council may, at any time on not less than seven (7) days' notice, revise this Clause 38.4 by replacing it with any applicable data protection or controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).

**39. GOVERNING LAW**

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.

**40. JURISDICTION**

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This agreement has been entered into on the date stated at the beginning of it.

Signed by Andrew Curtis,  
Town Clerk and Chief  
Executive for and on  
behalf of **NEWQUAY  
TOWN COUNCIL**

.....  
Town Clerk and Chief Executive

Signed by [insert name]  
for an on behalf of the  
[Consultant]

.....  
Director

## **Schedule 1    The Council's Consultancy Brief**

## **Schedule 2    The Consultant's Submission/ Fee Proposal**

### Schedule 3 KPIs

- 1.1 The KPIs which the Parties have agreed shall be used to measure the performance of the Services by the Consultant are contained in the below table.

KPI	Method of calculating service delivery/measure period	Target KPI
[To be inserted on award]	[To be inserted on award]	[To be inserted on award]

- 1.2 The Consultant shall monitor its performance against each Target KPI and shall send the Authority a report detailing the Achieved KPIs bi-weekly or at regular intervals to be agreed with the Authority.
- 1.3 Any extension or variation to the KPIs (including Key Milestone KPI's) shall be subject to the Council's discretion.

### Part 2 Consistent failure

#### 1. Consistent failure

In this agreement, **Consistent Failure** shall mean the Contractor repeatedly breaching any of the terms of this agreement (including failing to Achieve the KPI's) in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.

#### **Schedule 4    Key Personnel**

- 1     The Consultant shall appoint the persons named as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified in the Consultants tender as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the Council to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 2     The Consultant shall not remove or replace any of the Key Personnel unless:
  - (a) requested to do so by the Council;
  - (b) the person is on long-term sick leave;
  - (c) the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction;
  - (d) the person resigns from their employment with the Consultant; or
  - (e) the Consultant obtains the prior written consent of the Council.
- 3     The Consultant shall inform the Council of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Council shall be entitled to interview any such person and may object to any such proposed appointment within 5 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- 4     Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 5 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Consultant or the Council becoming aware of the role becoming vacant.
- 5     The Council may require the Consultant to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 6     If the Consultant replaces the Key Personnel as a consequence of this Schedule the cost of effecting such replacement shall be borne by the Consultant.

## **Schedule 5     Audit**

- 1     During the Term and for a period of 2 years after the Termination Date, the Council may conduct an audit for the following purposes:
  - (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all Consultants (including Sub-Contractors) of the Services at the level of detail agreed in Schedule 2 (Charges);
  - (b) to review the integrity, confidentiality and security of any data relating to the Council or any service users;
  - (c) to review the Consultant's compliance with the Data Protection, the FOIA, in accordance with the Agreement;
  - (d) to review any records created during the provision of the Services;
  - (e) to review any books of account kept by the Consultant in connection with the provision of the Services;
  - (f) to carry out the audit and certification of the Council's accounts;
  - (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;
  - (h) to verify the accuracy and completeness of the management reports delivered or required by this agreement.
- 2     Except where an audit is imposed on the Council by a regulatory body, the Council may not conduct an audit more than twice in any calendar year.
- 3     The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Consultant or delay the provision of the Services.
- 4     Subject to the Council's obligations of confidentiality, the Consultant shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
  - (a) all information requested by the above persons within the permitted scope of the audit;
  - (b) reasonable access to any sites controlled by the Consultant and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and

(c) access to the Consultant's Personnel.

- 5 The Council shall endeavour to (but is not obliged to) provide at least 15 days notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Consultant in which case the Consultant shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.
- 7 If an audit identifies that:
  - (a) the Consultant has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Consultant's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges or the Consultant's costs, then the remedial plan shall include a requirement for the provision of all such information;
  - (b) the Council has overpaid any Charges, the Consultant shall pay to the Council the amount overpaid within 20 days. The Council may deduct the relevant amount from the Charges if the Consultant fails to make this payment; and
  - (c) the Council has underpaid any Charges, the Council shall pay to the Consultant the amount of the under-payment less the cost of audit incurred by the Council if this was due to a default by the Consultant in relation to invoicing within 20 days.

## **Schedule 6    Safeguarding**

1. The Consultant shall designate a manager with responsibility for safeguarding children in respect of the Services, whose responsibilities shall include (but not limited to):
  - (a) ensuring safeguarding policies and procedures are in place and understood by all the Consultant's Staff;
  - (b) ensuring the Consultant's Policies include the process for accurate and confidential recording, storing and sharing of information;
  - (c) managing allegations of abuse against people who work with children, and liaising with the Authority's safeguarding service and the Authority's Designated Officer in accordance with statutory guidance.
2. maintaining records of the training of all members of the Consultants';
  - (a) maintaining and implementing a training plan in relation to safeguarding; and
  - (b) ensuring effective measures are in place for safe recruitment.
3. The Consultant Shall:
  - (a) ensure that it has established its own safeguarding policy in accordance with legislation and local multi-agency policies. The Consultant shall also ensure mechanisms to ensure safeguarding concerns are reported as required by the Council; and
  - (b) amend the Safeguarding Policies from time to time to comply with the local multi-agency policies and any of the Council's safeguarding requirements.
4. The Consultant shall ensure and be able to demonstrate to the Council that safe recruitment practices are in place for all staff, potential staff, volunteers and other persons engaged in the services who may reasonably be expected in the course of their employment or engagement to have access to vulnerable persons (as defined in the Care Standards Act 2000 and the Safeguarding Vulnerable Groups Act 2006 ("SGV Act")). Such practice will apply to trustees or members of management committees where they may reasonably be expected to have access to vulnerable.
5. The Consultant shall ensure that the Consultant's Staff receive suitable training in safeguarding children and young people, as a minimum attending an update every three years.
6. The Consultant shall comply with any reasonable requests made by the Commissioner in relation to the Commissioner's Prevent Duty.

7. For the purposes of this clause, "Prevent Duty" shall mean the Authority's duty to have due regard to the need to prevent people from being drawn into terrorism under section 26 of the Counter-Terrorism and Security Act 2015.
8. The Consultant shall make the Authority aware of any serious incidents that occur within 24 hours of the Consultant becoming aware of such incident. Press statements/interviews with the media should not be given without previous discussion with the Authority.
9. The Consultant shall give reasonable assistance to the Authority to comply with the SVG Act and shall not do any act either knowingly or recklessly that would cause the Authority to be in breach of the SVG Act.
10. The Consultant agrees to indemnify the Authority against all claims, actions, damages, Legal costs, proceedings, expenses and any other liabilities that the Authority incurs as a result of the Consultant's failure to comply with this Safeguarding condition.

#### **CONSULTANTS STAFF AND VOLUNTEERS**

11. Due to the nature of the work, all Staff deployed are exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act 1974 ("the Act") by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Orders 1975 and 1986 (the Orders"). The Consultant shall ensure that all Staff supply information in accordance with the Act and the Orders about convictions, which for other purposes are "spent" under the provisions of the Act. This includes a continuing contractual obligation on the part of the Consultant and all Staff to disclose any new offences and/or all matters which are, or have been, the subject of an investigation by anybody authorised to conduct criminal investigations. All such information should be disclosed to the Authority in accordance with their standard procedures, such procedures to be notified to the Consultant from time to time.
12. The Consultant shall ensure that all individuals engaged in the provision of the Services are:
  - (a) subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service ("**DBS**") including a check against the Children's barred list; and
  - (b) the Consultant shall monitor the level and validity of the checks under this Clause 12 for each member of staff.
13. The Consultant warrants that at all times for the purposes of this contract it has no reason to believe that any person who is or will be employed or engaged by the Consultant in the provision of the Services is barred from the activity in

accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

14. The Consultant shall ensure that the Authority and the Disclosure and Barring service is kept advised at all times of any member of the Consultant's Staff that subsequent to the commencement of his/her employment or engagement in the Service receives a conviction, or whose previous convictions become known to the Consultant.
15. If a Consultant requires a member of the Consultant's Staff to commence employment or engagement in respect of the Services prior to completion of an enhanced disclosure check undertaken through the Disclosure and Barring Service, then the Consultant shall ensure that the offer of employment or engagement will remain conditional upon a satisfactory Disclosure and Barring Service disclosure. Pending the completion of the enhanced disclosure check the Consultant shall ensure that a risk assessment must be completed in respect of the member of the Consultant's Staff, and, as a minimum, the individual shall not be allowed to work unsupervised with adults at risk, children and young people. This arrangement must only be used as a temporary measure and must be brought to an end immediately if so requested by the Authority.
16. Upon request by the Authority, the Consultant shall, provided that it can lawfully do so, permit access and obtain any consent necessary to allow the Authority access to any relevant Disclosure and Barring Service disclosures in the circumstances of an allegation being made against a member the Consultant's Staff or as the Authority otherwise deems necessary.
17. The Consultant shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 24 have been met.
18. The Consultant shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out a Regulated Activity (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to children or vulnerable adults.
19. The Consultant shall not employ or use the services of any person to undertake any Regulated Activity, who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to children.
20. The Consultant shall comply with all relevant law or guidance produced by the Department for Education or the Authority relating to the safe recruitment of staff.

21. The Consultant shall supply to the Authority on request a list of all Staff giving such information as the Authority reasonably requests, including, as a minimum, each member of Staff's:
  - (a) Name;
  - (b) Job title/description;
  - (c) Result of enhanced DBS check;
  - (d) Confirmation that the member of Staff has not been identified on the children's barred list
22. The Consultant shall ensure that all Staff work in compliance with the Authority's policies and procedures provided to it and all relevant Consultant protocols and, in the event of any conflict, the Authority's policies and procedures will prevail unless otherwise agreed between the Parties.
23. The Authority may (but only where reasonable grounds for such action exist) request the Consultant to take disciplinary action against or to remove from work any member of Staff in or about the provision of the Services. Following such request, the Consultant, acting reasonably, shall take appropriate action, including disciplinary action, proportionate to the circumstances.