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Consultants Appointment

(Short Form)

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**This Agreement** is made the day of 2018

**Between**

1. **THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA** of Kensington Town Hall, Hornton Street, London, W8 7NX (“the Authority”); and
2. [**name**] [Ltd or Plc] (a company registered in England and Wales under number ……………………) whose registered offices is at [address] (“the Consultant”)

(Hereinafter each referred to individually as a “Party” and together as the “Parties”)

**Background**

* 1. The Authority wishes to procure Leadership and Management Development Programme Services (‘the Services’).
  2. By a tender dated [ ] the Consultant has offered to provide such Services.
  3. The Authority has accepted the Consultant’s offer subject to the Conditions set out in this document.

1. Definitions And Interpretations
   1. The following terms shall have the following meanings for the purposes of this Agreement:-

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| **Phrase** | **Meaning** |
| Acceptance Date | means the date on which the Authority notified the Consultant that it had accepted the Consultant’s tender to provide the Services; |
| Agreement | means this Agreement comprising these Conditions and all the schedules attached hereto; |
| Authorised Officer | means the person (together with any duly authorised deputies) appointed by the Authority to act in such capacity in respect of this Agreement, or any replacement notified by the Authority to the Consultant; |
| Brief | means the Authority’s brief for the Services as included in Schedule 1 (if applicable); |
| Commencement Date | means *(insert date that service provision is to commence);* |
| Completion Date | means *(insert date that the Services must be completed by);* |
| Conditions | means the terms and conditions set out in this document (including any Special Conditions); |
| Confidential Information | means information that is or ought to be considered as confidential (however it is conveyed or on whatever media it is stored and whether or not explicitly marked or designated as confidential), including without limitation trade secrets, Intellectual Property Rights and know-how of either Party, information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, and all Personal Data |
| Contract Manager | means the person (together with any duly authorised deputies) appointed by the Consultant to act as Contract Manager in respect of this Agreement or any replacement notified by the Consultant to the Authority; |
| Contract Period | means the period commencing on the Acceptance Date and ending on the date on the Completion Date; |
| Data | means any data, document or information however stored that is:   * communicated in writing, orally, electronically or by any other means by the Authorityto the Consultant; * obtained by the Consultant during the course of the Consultant providing the Services; or   compiled for the Authorityby the Consultant during the course of the Consultant's provision of the Services ; |
| Data Protection Legislation | means: the DPA, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner; |
| DPA | means the GDPR; |
| EIR | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to them; |
| Equalities Legislation | Means all Legislation which makes unlawful discrimination, harassment and/or victimisation on grounds of age, disability, sex, marital or civil partnership status, sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation or temporary or part-time status in employment or otherwise including, without limitation, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 or any preceding, successor or amending Legislation concerning the same; |
| Fee | means the sum or rates and prices as set out in the Fee Schedule at Schedule 2 as submitted in the Commercial Envelope(s) on capitalEsourcing. |
| FOIA | means the Freedom of Information Act 2000 and any Subordinate Legislation made under that Act together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to that Act; |
| Force Majeure Event | Is defined in Clause 19.2 below; |
| GDPR | means the European Union General Data Protection Regulation 2016/679 (as amended or re-enacted from time to time) and any United Kingdom statute or European Union Regulation recognised in English law as substantially replacing the same; |
| Intellectual Property Rights | means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or not), applications for any of the above rights, copyright, database rights, domain, trade or business names, moral rights and any other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off together with all or any goodwill relating or attached thereto; |
| Modern Slavery Legislation | means all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including (but not limited to) the Modern Slavery Act 2015 (as amended from time to time); |
| MSA Offence | means any activity, conduct, or practice constituting an offence under Modern Slavery Legislation, including without limitation under sections 1, 2, and 4 of the Modern Slavery Act 2015 (as amended); |
| Performance Default | means a breach by the Consultant of its obligations under this Agreement including, for the avoidance of doubt but not limitation, a defect or omission in the provision of the Services or the failure to meet a Key Date; |
| Personal Data | Is as defined in the DPA; |
| Prevent Duty | means the duty under section 26 of the Counter Terrorism and Security Act 2015 (as amended from time to time) to have due regard to the need to prevent individuals from being drawn into terrorism; |
| Services | means the services described in Schedule 1; |
| Special Conditions | means the conditions set out at Clause 26 (Special Conditions) (if any); |
| Subconsultant | means a counterparty to an agreement entered into by the consultant wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Services and which counterparty may be at any stage of remoteness from the Authority in a subcontracting chain; |
| Working Day | means any day from 9:00am until 6:00pm Monday to Friday inclusive other than a day which is a designated as a bank or public holiday in England save that for the purposes of Clause 14 Working Day shall have the meaning ascribed in sub-Clause 14.7; |

* 1. Unless the context requires otherwise, words in the singular shall include the plural and vice versa.
  2. Words importing individuals shall be deemed also to include reference to incorporated and unincorporated associations and vice versa.
  3. A reference to one gender shall include a reference to the other genders.
  4. Headings are included for ease of reference only and shall not affect the construction of the Agreement.
  5. Any reference to any Clause or Schedule or Appendix is, except where it is expressly stated otherwise, a reference to a clause of or schedule or appendix to these Conditions. A reference to a paragraph is to the relevant paragraph of the Schedule in which it appears.
  6. The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules.
  7. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, consolidation, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
  8. The expressions "subsidiary" and "holding company" shall have the meanings set out in Section 1159 of the Companies Act 2006.
  9. Any references to a "month" or "day" shall be to a calendar month or day respectively.
  10. The Brief takes precedence over the Consultant’s proposal and these terms and conditions of contract take precedence over both

1. The Appointment
   1. The Authority appoints the Consultant to provide the Service for the Contract Period in return for the Fee and subject to the terms of this Agreement.
   2. The Authority shall be entitled at its absolute discretion to extend the Contract Period by 12 months.
2. Contract Management
   1. The Authorised Officer
      1. The Authority appoint and keep appointed throughout the duration of this Agreement a person as its Authorised Officer and shall give notice in writing to the Consultant from time to time of:-
         1. the name and contact telephone numbers of any person appointed as the Authorised Officer; and
         2. the removal of any notified person as an Authorised Officer
      2. For the avoidance of doubt, the Authorised Officer shall be entitled to monitor the performance of the Service by the Consultant and shall have the power to intervene in the case of any Consultant default.
   2. The Contract Manager
      1. The Consultant shall appoint and keep appointed throughout the duration of this Agreement a person as its Contract Manager and shall give notice in writing to the Authority of:
         1. the name contact telephone numbers office address, of any person appointed as the Contract Manager; and
         2. the removal of any notified person as Contract Manager

3.2.2 The Consultant shall ensure that throughout the duration of this Agreement the Contract Manager consults with the Authorised Officer (and with such other of the Authority's supervisory staff as may be specified by the Authorised Officer) as often as may reasonably be necessary to ensure a continuous and efficient provision of the Services in accordance with this Agreement;

1. The consultant’s Obligations
   1. Services to be provided by the Consultant

The Consultant warrants and undertakes that it shall:

* + 1. perform its obligations in accordance with this Agreement
    2. perform the Services with effect from the Commencement Date:
       1. in accordance with Schedule 1 of this Agreement and the contract documents (including but not limited to the Brief and any Proposal (if applicable);
       2. with all the due skill, care and diligence to be expected of a competent Consultant experienced in providing services of a similar kind, scope and complexity as the Services;
       3. in accordance with all applicable Legislation or other legal requirements relevant to the performance of the Services;

4.1.3 use in the performance of its obligations under this Agreement only such persons as are properly and sufficiently trained, qualified, competent, skilled, honest, and experienced in respect of the tasks or duties which they are to perform and the provision of this Agreement.

1. The Fee
   1. Subject always to the provisions of the clauses 5.2 to 5.6 inclusive, in consideration of the Consultant providing the Services in accordance with this Agreement the Authority shall pay to the Consultant the Fee which Fee, together with the disbursements if any specified in Schedule 2 (Fee Payments) shall be the sole remuneration due to the Consultant in respect of its obligations under this Agreement.
   2. The Consultant warrants that it has satisfied itself before entering into this Agreement as to the accuracy and sufficiency of the Fee which shall, except where expressly provided to the contrary, cover all the Consultant’s obligations under this Agreement and the Consultant shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Fee.
   3. Subject to Clause 6 (VAT), the Authority shall pay the Fee to the Consultant in accordance with the provisions of Schedule 2 (Fee Payments).
   4. Payment of the Fee shall be made within 30 (thirty) calendar days of receipt of a correct invoice quoting the relevant purchase order number by automated payment mechanism (BACS), unless other payment mechanisms are agreed in writing between the Authority and the Consultant. The Authority may refuse payment if the relevant purchase order number is not quoted on the invoice.
   5. The Consultant shall obtain the Authority’s written approval to any disbursement prior to it being incurred and in the event that the Consultant fails to do the Authority shall not be liable to pay such disbursement to the Consultant.
   6. The Council and the Consultant shall give an early warning by notifying the other as soon as either becomes aware of any matter which could increase the Fee, delay completion, change the accepted programme, delay meeting a key date or affect the work of the Council.
   7. Where the Consultant enters into a subcontract with a SubConsultant in accordance with and subject always to the provisions of Clause 19 (Assignment and Sub-contracting) below:
      1. the Consultant shall, if so requested by the Authority and at its own expense, include in such subcontract:
         1. an obligation on the Consultant to pay any amounts due under valid and undisputed invoices submitted by the relevant SubConsultant and in any event within 30 (thirty) calendar days of the Consultant’s receipt thereof; and
         2. an obligation on the relevant SubConsultant to include in any subcontract that may in turn be awarded and entered into by such SubConsultant and a third party at another stage of remove from the Authority in the supply chain imposing, as between the SubConsultant and such third party, requirements to the same effect as those stipulated in the above Clause 5.9.1(i); and
      2. if so requested by the Authority and subject to the Contract receiving at least 30 (thirty) calendar days’ prior notification thereof by the Authority, the Consultant shall at its own expense prepare and submit to the Authority for approval written proposals detailing potential methods by which the Authority may monitor the Consultant’s compliance with its obligations set out in the above Clause 5.7.1.
2. Value Added Tax
   1. All sums payable under this Agreement unless otherwise stated are exclusive of Value Added Tax) (“VAT”) and other duties or taxes.
   2. The Authority shall pay to the Consultant such VAT as is properly payable in respect of the services subject to the Consultant submitting to the Authority a proper and correct VAT invoice therefor.
3. Variation to the Services
   1. Either party may propose a variation by giving written notice to the other party. Neither Party shall be obliged to give its consent to a variation save that in the event that a variation is proposed as a consequence of a change in law neither Party shall unreasonably withhold its consent to such variation or any reasonable modification to the contract.
   2. A variation shall not be effective unless: (i) it is recorded in writing and signed by the Authorised Officer and the Contract Manager; and (ii) the substance of such variation has first been approved in accordance with any applicable internal processes or policies of each Party; and accordingly neither the Authority nor the Consultant shall implement a variation other than one which is in accordance with this Clause 7.
4. Intellectual Property
   1. This Agreement, together with all Intellectual Property Rights in it, shall be the exclusive property of the Authority to the extent permitted by law and subject to the terms of any licences to the Authority by its third party legal advisors of the copyright subsisting therein.
   2. Any and all Intellectual Property Rights developed under this Agreement or arising from the provision of the Services by the Consultant shall belong to the Authority absolutely and the Consultant agrees that in the event that by operation of law any such Intellectual Property Right does not automatically vest in the Authority the Consultant shall execute or cause to be executed (by its staff if necessary) including following expiry or termination of this Agreement all deeds, documents and acts required to assign such Intellectual Property Right to the Authority with full title guarantee.
   3. The Consultant shall not cause suffer or permit anything which may damage or endanger the intellectual property of the Authority or the Authority’s title to it, nor assist or allow others to do so.
   4. The provisions of this Clause 8 shall survive the expiry or earlier termination of this Agreement without limit in point of time.
5. Audit and Information
   1. The Consultant shall keep full and proper records in relation to the performance of its obligations under this Contract and provide the Authority with any information regarding such records as may be reasonably requested in writing by the Authority and/or its internal or external auditors having regard to the Authority’s duties and responsibilities as a public authority.
   2. The provisions of this Clause 9 shall survive the expiry of Termination of this Agreement and shall continue in force in accordance with their terms.
6. Confidentiality
   1. The Consultant shall not use any Confidential Information issued or provided by or on behalf of the Authority in connection with this Agreement otherwise than for the purpose of this Agreement (except with the prior written consent of the Authority).
   2. Without prejudice to the generality of its obligations under Clauses 10.1 the Consultant shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with this Agreement is given only to such of the Consultant’s employees, Sub-Consultants, professional advisers or consultants as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;
   3. The provisions of Clauses 10.1 to 10.2 inclusive shall not apply to any information:
      1. which is already in the public domain other than through previous default by the party making the disclosure or any other person to whom that party is permitted to disclose such information under this Agreement;
      2. which is required to be disclosed by law
      3. which is disclosed by the Authority in accordance with the FOIA or EIR or otherwise;
      4. was already in the possession of the party making the disclosure without restrictions as to its use before it came into that party's possession or knowledge as a result of or in connection with this Agreement;
      5. is reasonably required by any person engaged in the performance of their obligations in relation to this Agreement for the performance of those obligations;
   4. The provisions of this Clause 10 shall survive the expiry or earlier termination of this Agreement without limit in point of time.
7. Freedom Of Information
   1. The Consultant acknowledges that, in order to comply with the FOIA and the EIR, the Authority may be obliged, on request, to provide or consider the provision of information to third parties where that information constitutes or may constitute Confidential Information. Subject to the provisions of this Clause 11, the Consultant shall assist and co-operate with the Authority (at the Consultant's expense) to facilitate the Authority’s compliance with the FOIA and/or EIR in that regard.
   2. Without prejudice to the generality of its obligations under Clause 11.1, the Consultant shall:
      1. transfer any request for information that it or its Sub-Consultants receive, to the Authority as soon as practicable after receipt and in any event within two (2) Working Days of receiving that request for information; and
      2. provide the Authority with a copy of all information in its or its Sub-Consultant’s possession or power that the Authority reasonably considers is relevant to the Request in the form that the Authority requires as soon as practicable and in any event within five (5) Working Days of the Authority requesting that Information (and any follow-up Information required by the Authority thereafter within two (2) Working Days of the Authority’s follow-up request).
   3. The Consultant further acknowledges that, notwithstanding the provisions of Clause 11.1, the Authority may be obliged under the FOIA or the EIR to disclose information that is or may be Confidential Information:
      1. in certain circumstances without consulting with the Consultant; or
      2. following consultation with the Consultant and having taken the Consultant’s views into account;

provided always that where Clause 11.3.1 applies, the Authority shall draw this to the attention of the Consultant prior to any disclosure.

* 1. Subject to the Authority complying with its obligations under this Clause 11, the Authority shall not be liable for any loss, damage, harm or other detriment suffered by the Consultant or any of the Consultant’s sub-Consultants arising from the disclosure of any Information, whether or not such information is Confidential Information, falling within the scope of the FOIA or EIR.
  2. The Consultant shall indemnify the Authority against all claims, demands, actions, costs, proceedings and liabilities that the Authority incurs due to the Consultant’s or any of its Sub-Consultant’s breach of this Clause 11.

1. Liability
   1. Subject to Clause 12.2 the Consultant shall indemnify the Authority, and keep it indemnified, from and against any and all losses, costs, expenses, damages, claims demands or proceedings whatsoever and howsoever to the extent arising directly (but not indirectly or consequentially) whether in contract tort including negligence under statute in common law or otherwise out of the act default negligence breach of contract breach of statute or statutory duty by the Consultant or any of its employees or agents acting within the course of their employment or any of its sub-Consultants and their employees or agents.
   2. Neither Party limits its liability for death or personal injury caused by the negligence of the itself or any of its employees or agents acting in the course of their employment or in respect of a misrepresentation made fraudulently or in respect of any breach of an implied terms in respect of title to goods.
   3. **Insurance**
      1. Without limiting its liability hereunder the Consultant shall maintain throughout the duration of this Agreement and for a period of six (6) years following its expiry of early termination with an insurance company of good repute and at its own cost the following policies of insurance:
         1. Professional Indemnity liability with a limit of indemnity of not less than five million pounds (£2,000,000) per claim or series of claims arising out of one event;
         2. Public and products liability insurance with a limit of indemnity of not less than ten million pounds (£5,000,000) per claim or series of claims arising out of one event;
         3. Employer’s liability insurance in accordance with the Employer’s Liability (Compulsory Insurance) Act 1969 with a limit of indemnity of not less than ten million pounds (£5,0000,000) per claim or series of claims arising out of one event.
      2. The Consultant shall at the Commencement Date and thereafter upon request produce to the Authorised Officer for inspection the originals of the policies effecting the insurances referred to in this Clause 12 or evidence in the form of a broker’s letter that such policies are in place;
2. Defects In The Performance Of The Services
   1. The Consultant shall be responsible for correcting any Performance Default including, but not limited to, any Performance Default drawn to its attention in a written notice from the Authority.
   2. Without prejudice to the generality of Clause 13.1, in the event of a Performance Default the Authority shall be entitled to:
      1. issue a written notice to the Consultant (a “Default Notice”) which notice shall specify the Performance Default and in the event that such default is capable of remedy shall specify a reasonable period within which the Consultant shall effect a remedy;
      2. withhold payment of the Fee (or any instalment of the Fee) until the Performance Default is remedied
   3. In the case of a Default which is capable of remedy the Consultant shall remedy such Default at no cost to the Authority and within the period specified in the Default Notice or, if no such timescale is stipulated, as soon as possible.
   4. If the Consultant fails to remedy a Performance Default within the time specified in the Default Notice the Authority shall be entitled to itself remedy or to instruct a third party to remedy the Performance Default (if such default is capable of remedy by the Authority or a third party) and shall be entitled to deduct the cost it incurs in effecting such remedy from the Fee or any instalment of the Fee under Clause 38 or recover the same from the Consultant as a debt due.
   5. If it is not possible to remedy a Performance Default, the Authority shall be entitled in respect of such default to deduct from the Fee or any instalment of the Fee an amount equal to the value of the loss or damage suffered by the Authority arising directly or indirectly from the Performance Default including in respect of wasted staff and management time.
   6. The provisions of this Clause 13 are without prejudice to any other right or remedy available to the Authority under this Agreement or at law.
3. Termination
   1. The Authority may terminate this Agreement without liability to the Consultant by giving to the Consultant written notice having immediate effect or after such period as the Authority may determine if:-
      1. the Consultant is in material breach of any of its material obligations under this Agreement and in the case of a breach capable of remedy fails to remedy such breach within the period given for it to be remedied in the Default Notice; or
      2. the Consultant or any of its employees or agents acting or purporting to act on the Consultant’s behalf commits an act which is an offence under the Enterprise Act 2000;
      3. the Consultant makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
      4. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Consultant; or
      5. the Consultant ceases, or threatens to cease, to carry on business; or
      6. the Consultant or any of its employees shall have committed any offence under the Bribery Act 2010; or
      7. the Consultant or any of its employees, agents, or SubConsultants shall have committed an MSA Offence
   2. Without prejudice to Clause 14.1, the Authority shall be entitled to terminate this Agreement at any time by giving to the Consultant not less than one 3 months’ notice in writing to that effect.
4. Consequences of Expiry or Termination
   1. Termination shall be without prejudice to the rights and remedies of the Authority and the Consultant accrued before such termination and nothing in this Agreement shall prejudice the right of either party to recover any amount outstanding as at the date of such Termination.
   2. Upon the completion of the Services or expiry or termination (for whatever reason) the Consultant shall:-
      1. forthwith cease to provide the Services;

15.2.2 without prejudice to the Authority’s other rights in this Agreement within 10 (ten) calendar days following Termination or the completion of the Services at the Consultant’s own cost return to the Authority or if instructed by the Authority to do so dispose of in accordance with the Authority’s instructions all and any documents, data (including Personal Data and Sensitive Personal Data where applicable) and other information and materials relating to the Service;

15.2.3 make good to the Authority any accounting discrepancy and/or loss or damage attributable to a Performance Default by the Consultant, its Staff, sub-Consultants and agents.

* 1. In the event that the Consultant fails to comply with its obligations in Clause 15.2.3 the Authority shall be entitled to recover its reasonable costs incurred in connection with exercising its rights pursuant to Clause 15.2.3 such sum to be recoverable by the Authority from the Consultant as a debt due.
  2. The provisions of this Clause 15 shall survive the expiry or early termination of this Agreement without limit in point of time.

1. Dispute Resolution
   1. In the event that any dispute arises between the Parties in connection with this Agreement, the matter shall be referred to a senior officer of the Authority and a senior representative of the Consultant for resolution.
   2. If any dispute is not resolved within 20 Working Days of the referral under Clause 16.1 (or such longer period as the Authority and the Consultant may agree) then the Parties may attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure 2001 (the “Model Procedure”) or such later edition as may be in force from time to time.
   3. If the dispute is not resolved within 10 Working Days of the mediation, then the Parties may litigate the matter.
2. not used
3. Equal Opportunities and Race Relations
   1. The Consultant shall comply with all applicable Equalities Legislation in its performance of the Contract and shall take all reasonable steps to ensure that all servants, employees, agents and sub-Consultants of the Consultant engaged in the provision of the Services do not unlawfully discriminate, harass or victimise within the meaning and scope of the Equalities Legislation. This Clause 18 shall be without prejudice to the Consultant’s general obligation to comply with Legislation.
   2. The Consultant shall provide such information as the Authority requires from time to time to satisfy itself that the Consultant complies and shall continue to comply with Clauses 18.
   3. Without prejudice to the generality of Clause 18.1 , the Consultant shall at all times comply with the Equality Act 2010 (the “Act”) and all relevant codes of practice in respect of its treatment of its employees and in the performance of the Services. In particular, the Consultant shall in its performance of its obligations in this Agreement take (and shall ensure that its servants, agents, employees and sub-Consultants take) all reasonable steps to eliminate unlawful discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Act) and persons who do not share it; and foster good relations between persons who share such a protected characteristic and persons who do not share it. The Consultant shall also ensure that it and its servants, agents, employees and sub-Consultants provide all relevant information in this regard to the Authority so that the Authority can assess its own compliance with its general and specific duties under the Act.
4. Assignment and Sub-Contracting
   1. The Consultant shall not without the prior written consent of the Authority which consent the Authority shall be absolutely entitled to withhold or make subject to such conditions as it may require:
      * 1. assign, charge, novate or create any interest in including by way of a trust or otherwise deal with its rights or obligations arising under the Contract or any part thereof; or
        2. sub-contract the provision of the Services or any part thereof provided.
      1. Any consent given by the Authority under sub-Clause 24.1.1, shall, not relieve the Consultant from any liability or obligation under this Agreement so that the Consultant shall be responsible for the acts, defaults or neglect of any sub-Consultants in all respects as if they were the acts, defaults or neglect of the Consultant. Any breach by the Consultant of Clauses 24.1.1 to 24.1.3 shall constitute a substantial and material breach of Contract by the Consultant.
5. No Agency Partnership Employment Or Tenancy
   1. The Consultant shall not:-
      1. be, act or hold itself out as an agent of the Authority; nor
      2. make any representations or give any warranties to third parties on behalf or in respect of the Authority; nor
      3. bind or hold itself out as having authority or power to bind the Authority.
   2. Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of employer and employee between the parties nor any landlord and tenant relationship.
6. Waiver
   1. The failure or neglect by either party to enforce at any time any term or provision of this Agreement or to exercise any right or remedy available to it under this Agreement or at law shall not be construed nor be deemed to be a waiver thereof nor in any way affect the validity of the whole or any part of this Agreement nor cause any diminution of the obligations established by this Agreement nor shall any waiver of a breach constitute a waiver of any subsequent breach whether such breach shall be a like breach or not or of the same term or not nor shall a waiver of any right to enforce any term or provision of this Agreement constitute a waiver of the right to subsequently enforce such term or provision or any other term or provision.
7. Notices
   1. Except as otherwise provided in this Agreement all notices or communication which are given under this Agreement shall be in writing and shall be sent to the recipient by notice given in accordance with the provision of this Clause 22.
   2. Any such notice may be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served as follows:
      1. by hand when delivered, if by first class post 48 hours after posting, if by facsimilie transmission when dispatched, subject to satisfactory transmission reports being received by the sender.
8. Force Majeure
   1. If either party is unable to perform any of its obligations under this Agreement because of a Force Majeure Event that party will have no liability to the other for that failure to perform provided that such party could not with reasonable prudence and foresight have prevented overcome or avoided the failure.
   2. The Authority shall not be liable to make any payment to the Consultant in respect of the suspension of the Service or any part of it by reason of an event of Force Majeure and any sum already paid in respect of any part of the Service not yet performed shall be held to the credit of the Authority and returned to the Authority.
   3. The Force Majeure Events are explosion, war, civil disorder, fire or flood, actual or threatened terrorist attack or acts of local or central Government or other competent authorities (other than the Authority in its capacity as contracting party and other than any act whose primary purpose is to effect the withdrawal of the United Kingdom from the European Union)..

**24 GENERAL**

24.1 The Consultant shall not without the prior consent of the Authority publish alone or in conjunction with any other person any articles or other information nor make any statement in or to the press or in any media relating to the Services provided that the Consultant shall be entitled to disclose that it is providing the services to the Authority.

24.2 If any provision of this Contract is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Contract and the remainder of the provision in question shall not be affected thereby.

24.3 Whenever under this Agreement any sum of money shall be recoverable from or payable by the Consultant to the Authority, the same may be recovered as a debt or deducted from any sum then due, or which at any time thereafter may become due to the Consultant under this Agreement or under any other contract between the Consultant and the Authority.

24.4 This Agreement is not exclusive and the Authority shall be entitled to procure services of the same or similar nature to the Services from any third party or carry them out itself.

24.5 The Parties do not intend that any term of this Contract be enforceable by any third party.

24.6 This Agreement constitutes the entire agreement and understanding between the parties in relation to the subject matter hereof and supersedes all prior representations, arrangements, understandings, agreements, statements, or warranties (whether written or oral) relating to the same.

24.7 The Consultant shall at all times comply with the Immigration, Asylum and Nationality Act 2006 and any other Legislation relevant to the legality of employing any person who is not a British national (together, “Immigration Legislation”) and shall not employ as any member of staff throughout the Contract Period any person who is not eligible to work in the United Kingdom pursuant to Immigration Legislation. Without prejudice to the generality of the foregoing, the Consultant shall comply with any and all record-keeping requirements of Immigration Legislation and provide documentary evidence that it has so complied (to the Authority’s reasonable satisfaction) within 14 days of any request being made by the Authority.

* 1. The Consultant shall ensure compliance with the Prevent Duty and, if so requested by the Authority, shall as soon as practicable and no later than ten 10 Working Days following receipt of such request provide the Authority with written evidence of such compliance.
  2. The Consultant shall at all times comply (and shall require that each of its SubConsultants shall comply) with all Modern Slavery Legislation, including without limitation section 54 of the Modern Slavery Act 2015. The Consultant acknowledges, understands, and accepts that the Authority is subject to the requirements of section 52 of the Modern Slavery Act 2015 (the “**Duty to Notify**”) and, where so requested by the Authority, shall assist and co-operate with the Authority at its own expense in order to enable the Authority may comply with its Duty to Notify. The Consultant hereby warrants that, so far as it is aware, no MSA Offence is occurring within its business or that of its SubConsultants or in its supply chain.

**25 Law and Jurisdiction**

This Agreement shall be governed by the laws of England, and the Consultant agrees to submit to the exclusive jurisdiction of the English courts.

26 DATA PROTECTION - GDPR

* 1. Each Party shall fully comply with its respective obligations under the Data Protection Legislation.
  2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is as listed in Schedule 5 and may not be determined by the Contractor.
  3. The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
  4. The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Authority, include:
     1. a systematic description of the envisaged Processing operations and the purpose of the Processing;
     2. an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
     3. an assessment of the risks to the rights and freedoms of Data Subjects; and
     4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
  5. The Contractor shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:
     1. Process that Personal Data only in accordance with Clause 20.2 above, unless the Contractor is required to do otherwise by Law. If it is so required, the Contractor shall promptly notify the Authority before Processing the Personal Data unless prohibited by Law;
     2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
        1. nature of the data to be protected;
        2. harm that might result from a Data Loss Event;
        3. state of technological development; and
        4. cost of implementing any measures;
     3. ensure that:
        1. the Staff do not Process Personal Data except in accordance with this Contract (and in particular Clause 20.2 above);
        2. it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
           1. are aware of and comply with the Contractor’s duties under this clause;
           2. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-Processor;
           3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
           4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
           5. not transfer Personal Data outside of the EEA unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
           6. the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
           7. the Data Subject has enforceable rights and effective legal remedies;
           8. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
           9. the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the Processing of the Personal Data;
           10. at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.
  6. Subject to Clause 20.7 below, the Contractor shall notify the Authority immediately if it:
     1. receives a Data Subject Access Request (or purported Data Subject Access Request);
     2. receives a request to rectify, block or erase any Personal Data;
     3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
     4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract;
     5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
     6. becomes aware of a Data Loss Event.
  7. The Contractor’s obligation to notify under Clause 20.6 above shall include the provision of further information to the Authority in phases, as details become available.
  8. Taking into account the nature of the Processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 20.6 above (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
     1. the Authority with full details and copies of the complaint, communication or request;
     2. such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
     3. the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
     4. assistance as requested by the Authority following any Data Loss Event;
     5. assistance as requested by the Authority with respect to any request from the Information Commissioner’s Office, or any consultation by the Authority with the Information Commissioner's Office.
  9. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
     1. the Authority determines that the Processing is not occasional;
     2. the Authority determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
     3. the Authority determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
  10. The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority’s designated auditor.
  11. The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
  12. Before allowing any Sub-Processor to Process any Personal Data related to this Contract, the Contractor must:
      1. notify the Authority in writing of the intended Sub-Processor and Processing;
      2. obtain the written consent of the Authority;
      3. enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Clause 20 (*Data Protection*) such that they apply to the Sub-Processor; and
      4. provide the Authority with such information regarding the Sub-Processor as the Authority may reasonably require.
  13. The Contractor shall remain fully liable for all acts or omissions of any Sub-Processor.
  14. The Contractor may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
  15. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Authority may on not less than 30 Working Days’ notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.
  16. The Contractor shall at all times comply with the DPA 2018 as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA 2018 covering the data Processing to be performed in connection with the Services.
  17. Notwithstanding anything to the contrary in this Contract, the Contractor shall fully indemnify and keep fully indemnified the Authority against all Losses incurred by it in respect of any breach of this Clause 20 (*Data Protection*)by the Contractor and/or any act or omission of any Subcontractor. For the avoidance of doubt, the indemnity contained in this Clause 20.17 is not subject to any limit on the Contractor’s liability as may be set out elsewhere in this Contract.
  18. The provisions of this Clause 20 (*Data Protection*)shall apply during the continuance of the Contract and indefinitely after its Termination.

This Document is signed on the date stated at the beginning of this contract.

**Signed by )**

**[*insert name of company* ]**

**Director/Company secretary ) ................................................**

**Witnessed by ) ………………………………………………**

**SIGNED by and on behalf of the**

**Royal Borough of Kensington and Chelsea**

**Director** ………………………………………………

Schedule 1 The Services

Schedule 2 Fee Payments