

**CONTRACT**

Between

**The Mayor and Burgesses of the London Borough of Lambeth**

and

**[CONSULTANT]**

## **THE CONTRACT**

The Contract shall comprise the following:

### **A. The Conditions of Contract comprising:**

- 1 Appointment
- 2 Definitions and Interpretations
- 3 Contract Term
- 4 The Consultant's Obligations
- 5 The Consultant's Representative
- 6 The Council's Obligations
- 7 The Council's Authorised Officer
- 8 VAT
- 9 Confidentiality
- 10 Indemnity
- 11 Insurance
- 12 Conflict of Interest
- 13 Monitoring of the Contract
- 14 Termination
- 15 Termination consequences
- 16 Delivery up of documents on termination
- 17 TUPE
- 18 Force Majeure
- 19 Status of the Consultant
- 20 Anti-fraud, Corruption and Modern Slavery
- 21 Variations
- 22 Data Protection and Freedom of Information
- 23 Equal Opportunities
- 24 Policy documents
- 25 Criminal Records / Disclosure and Barring
- 26 Complaints in Respect of Service Provision
- 27 Disputes
- 28 Best Value & Policy Themes
- 29 Committee Meetings and other meeting
- 30 Local Authority Functions
- 31 Waiver
- 32 Supersedes prior agreements
- 33 Entire Contract
- 34 Notices
- 35 Joint and Several
- 36 Assignment and Sub-Contracting
- 37 Third Parties
- 38 Governing Law

**B. Schedules to the Contract comprising:**

<b>Schedule 1</b>	<b>The Service Specification</b>
<b>Schedule 2</b>	<b>Contact details</b>
<b>Schedule 3</b>	<b>Pricing Document and Payment Terms</b>
<b>Schedule 4</b>	<b>Schedule of Processing, Personal Data and Data Subjects</b>

DRAFT

# CONTRACT FOR PROVISION OF CONSULTANCY SERVICES FOR THE UPDATE OF THE COUNCILS WASTE STRATEGY

**THIS CONTRACT** is made the                      day of

## **BETWEEN**

- (1) [CONSULTANT NAME] whose address for service within the jurisdiction of the courts of (England and Wales) is xx ('the Consultant')

## **AND**

- (2) The Mayor and Burgesses of the London Borough of Lambeth, Lambeth Town Hall, Brixton Hill, London SW2 1RW ('the Council')

## **1 Appointment**

- 1.1 The Council wishes to commission the Consultant to provide consultancy services with the Conditions of Contract, the Service Specification, Schedules and any Appendices herewith.

## **(CONDITIONS OF CONTRACT)**

## **2 Definitions & Interpretations**

### **2.1 Definitions**

Authorised Officer means xx whose contact details are listed in Schedule 2, or any person whose name has been notified in writing by or on behalf of the Council to the Consultant in accordance with Clause 7

Commencement Date shall be the date the Consultant first delivers the Services to the Council

Contract means the Contract entered into by the Council and the Consultant embodied in the Conditions of Contract and the Contract Documents

Contract Documents mean the Terms and Conditions of Contract, the tender documents any submissions made by the Consultant together with the Schedules and any appendices

Contract Standard means such standards as complies in each and every respect with all relevant provisions of the Contract Documents and where to the extent that no criteria are

stated in the Contract the standard is to be to the entire satisfaction of the Authorised Officer and in any event to the following standards:

- in a good, safe and efficient manner in accordance with good practice and highest professional standards
- in accordance with all relevant provisions of the Contract Documents
- in accordance with all applicable statutes, statutory instruments, rules, regulations and bye-laws
- in a manner which shall not cause the image and reputation of the Council to be diminished in any way
- in accordance with all applicable standards including the British Standards Institute and equivalent EC standards

“Controller”, “Joint Controller”, “Processor”, “Sub-Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer”, “Data Protection Impact Assessment: take the meaning given in the GDPR

**Council** means the Council of the Mayor and Burgesses of the London Borough of Lambeth, Lambeth Town Hall, Brixton Hill, London SW2 1RW

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

**Data Protection Legislation** means (i) the General Data Protection Regulation (GDPR), (ii) the Law Enforcement Directive and any applicable national implementing Laws as amended from time to time, (iii) the Data Protection Act 2018, and (iv) all applicable laws about the processing of personal data and privacy;

**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

**Force majeure** means:

- acts of war
- acts of God
- decrees of Government
- riots

- civil commotion; and
- any event or circumstance beyond the control of, or unpreventable by, the affected party other than any labour dispute between the Consultant and his staff or the failure to provide the Services by any of the Consultant's sub-contractors

Instruction	means a written order to provide the Services or any part thereof as described therein
Pricing Document	means the rates and prices submitted by the Consultant for the provision of the Services as set out in Schedule 3
Protective Measures	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in and Schedule appended to appended to the contract prescribing security measures
Schedules	mean the Schedules and appendices attached to these Conditions
Services	means the works and Services required to provide the outcomes set out in the Specification at Schedule 1 and which are to be delivered by the Consultant
Consultant	has the same meaning as means [Consultant] and its staff, agents and sub-contractors
Consultant's Representative	means the person who is to represent the Consultant appointed pursuant to Clause 5.1, whose contact details are listed in Schedule 2
Term	means the period the Services shall be provided by the Consultant from the Commencement of the Services to the completion of all work required under the Contract.
Variation	has the meaning ascribed to it in Clause 21

## 2.1 Interpretation

- a. Words in the singular include the plural and vice versa;
- b. Words in the masculine include words in the feminine and vice versa
- c. Words importing individuals shall be treated as importing corporations and vice versa;
- d. Headings are for ease of reference only and shall not affect the construction of the Contract; and
- e. Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to such enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument.

### **3 Contract Term**

- 3.1 The Contract Term ('Term's) is the period from xx to xx unless either terminated in accordance with Clause 14 of this Contract or extended by agreement.
- 3.2 The Council may terminate this Contract where any of the grounds listed in Regulation 73(1) of the Public Contracts Regulations 2015, in the reasonable belief of the Authorised Officer, apply to this Contract. In such circumstances the Council may give reasonable notice, and the Parties agree and acknowledge that 30 days' notice in writing will constitute reasonable notice.
- 3.3 This Contract does not constitute an exclusive agreement between the parties and the Council shall be entitled to employ other persons to provide similar services to the Services.

### **4 The Consultant's Obligations**

- 4.1 During the Term the Consultant shall devote such of his time attention and abilities to the provision of the Services as required by this Contract.
- 4.2 Where the Parties have agreed that a particular individual or number of individuals will be engaged in the delivery of the Services the Consultant must not remove or substitute that individual or any of those individuals (as the case may be) without consultation with the Authorised Officer. Nothing in this Clause 4.2 shall operate to prevent the Consultant from exercising its rights as employer in regard to disciplinary matters.
- 4.3 The Consultant shall comply with the reasonable direction of the Authorised Officer and use his best endeavours to provide the Services.
- 4.4 The Consultant shall at all times comply with the requirements of the Health and Safety at Work, etc. Act. 1974, the Management of Health and Safety at Work Regulations 1992 (including the provision by the Consultant of a copy of its risk assessment under these Regulations when requested by the Council), and of other Acts, Regulations, Orders or rules of law pertaining to health and safety. The Consultant shall also ensure the health and safety of members of the public, the Council's servants, agents and contractors.

- 4.5 Except for any intellectual property which the Specification specifies will vest in the Council, the Consultant shall own the copyright in all intellectual property that arises or is obtained by or developed by the Consultant in respect of, or in the course of, or in connection with, the Services (“the Intellectual Property Right Work”). The Consultant hereby grants to the Council a royalty-free licence in perpetuity to use and reproduce the Intellectual Property Right Work for all purposes relating to the Services. The Council shall also be entitled to grant sub-licences to others. If requested by the Council the Consultant shall deliver to the Council all documents produced under the Contract. The Consultant shall be entitled to retain a copy of all the documents as required by its insurers. The Consultant shall indemnify the Council against all costs and damages associated with infringements of intellectual property rights in relation to the Services provided by the Consultant.
- 4.6 The Consultant shall, at all times during the Term, assign to the Services the sufficient, qualified and experienced servants and agents to ensure that the Services are provided in accordance with the Contract Standard.
- 4.7 The Consultant shall include in any sub-contract which it awards in connection with the Services an obligation to pay the sub-contractor in the manner prescribed by Regulation 113(2)(c) of the Public Contracts Regulations 2015.
- 4.8 It is the Parties’ belief and understanding that the IR35 Intermediaries legislation off-payroll rules on working in the public sector will not apply to the staff engaged in the provision of the Services but the position shall be determined on the facts and the Consultant shall fully and promptly cooperate with the Council in making any such determination.
- 4.9 The Consultant shall as may be necessary or desirable co-operate, liaise with and co-ordinate its activities with those of any other consultant or sub-contractor employed directly or indirectly by the Council and shall provide the Services in harmony with and at no detriment to any other service provided by or on behalf of or to the Council.
- 4.10 The Consultant, upon the formation of the Contract and at all times throughout the Contract Term, warrants and represents to and undertakes with the Council in the terms set out in its proposal.

## **5 The Consultant’s Representative**

- 5.1 The Consultant shall appoint a senior person as a representative empowered to act on behalf of the Consultant for all purposes connected with the Contract. Such appointment or any further appointment shall be subject to the approval of the Council.
- 5.2 The Consultant shall ensure that the Consultant's Representative, or a competent deputy authorised by the Consultant, is present at all work-places of the Consultant, where work in connection with the Services is being carried out, and available to meet the Authorised Officer or representatives at all reasonable times.



## **6 The Council's Obligations**

6.1 In consideration of the services rendered by the Consultant under this Contract the Council shall pay the Consultant in accordance with the provisions of Schedule 3.

6.2 It is a condition of this Contract that the Council shall pay all properly presented valid invoices within 30 days of validation by the Council, such validation to be completed within 7 days of presentation.

6.3 The Council shall provide clear and accurate instructions to the Consultant and shall take reasonable measures to assist the Consultant to provide the Services to the Contract Standard.

## **7 The Council's Authorised Officer**

7.1 The Authorised Officer shall be the person defined in this Contract and named in Schedule 2 or such other person nominated in writing by the Council from time to time to act in the name of the Council for the purposes of the Contract.

7.2 The Authorised Officer shall have power to issue instructions to the Consultant on any matter relating to the provision of the Services, and the Consultant shall comply therewith.

## **8 VAT**

8.1 All sums payable under this Contract unless otherwise stated are exclusive of VAT and other duties or taxes

## **9 Confidentiality**

9.1 The Consultant shall not at any time during or after the Term divulge or allow to be divulged to any person any confidential information relating to the functions or affairs of the Council to a third person.

## **10 Indemnity**

10.1 Subject to Clause 10.2 the Consultant shall indemnify and keep indemnified the Council from and against any and all loss, damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by the Council resulting from a breach of this Contract by the Consultant including but not limited to:

(a) any act, neglect or default of the Consultant or its servants or agents; and

(b) breaches in respect of any matter arising from the supply of the Services resulting in any successful claim by any third party.

10.2 Subject to Clause 10.3 the Consultant's aggregate liability under this Contract (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) in respect of any loss of or damage to tangible property (which for the avoidance of doubt includes data) (whether belonging to the other party or a third party) howsoever caused will be limited to £2,000,000 (£2m), which the Parties agree to be fair and reasonable in the circumstances.

10.3 Neither party excludes or limits its liability (if any) to the other party:

- for breach of its obligations arising under Section 12 Sale of Goods Act 1979 or Section 2 Supply of Goods and Services Act 1982;
- for personal injury or death resulting from its negligence;
- for any matter for which it would be illegal for it to exclude or to attempt to exclude its liability; or for fraud.

10.4 The Council shall not be liable for any consequential losses including but not exclusively, loss of profit, earning, income, business, goodwill, savings opportunities, reputation or associated costs to the Consultant howsoever caused.

## **11 Insurance**

11.1 The Consultant shall maintain at its own cost policies of insurance to cover its liability in respect of any act or default for which it may become liable to indemnify the Council under the terms of this Contract in the following minimum sums:

- (a) Employers' liability of £5,000,000 (five million)
- (b) Public liability of £5,000,000 (five million)
- (c) Professional indemnity of £2,000,000 (2 million)

11.2 The Consultant warrants and represents that it has the insurances required by Clause 11.1. If the Authorised Officer demands it, the Consultant shall provide evidence by broker's letter or some other satisfactory form that it has the insurances.

## **12 Conflict of Interest**

12.1 Upon becoming aware of any possible conflict of interest that may arise between the interest of the Council and any other of the Consultant's client, the Consultant shall notify the Authorised Officer immediately and shall take all reasonable steps to remove or avoid the cause of any such conflict to the satisfaction of the Authorised Officer.

## **13 Monitoring of the Contract**

13.1 The Consultant shall as soon as reasonably practicable provide the Authorised Officer with any information relating to the carrying out of the Services which the Authorised Officer may reasonably request.

## **14 Termination**

14.1 Unless otherwise agreed by the parties or terminated pursuant to Clause 3.2 or any of the following provisions, the Contract shall expire at the end of the term specified in Clause 3.1 of this Contract.

14.2 The Council may terminate the Contract forthwith if:

- (a) The Authorised Officer is of the reasonable opinion that the Consultant has failed to perform the Services specified in the Contract or has failed to do so to the Contract Standard and that such failure is incapable of remedy.

- (b) The Consultant has failed to remedy a failure to perform the Services or has failed to remedy a failure to provide the Service to the Contract Standard including the standard required by the Schedules or these Conditions of Contract in the time required to remedy such failure as expressed in writing to the Consultant.
- (c) If the Services have not been provided at the time set out in the Schedules, and the Authorised Officer reasonably considers either that time is of the essence or that the nature of the Services justifies termination without affording the Consultant an opportunity to remedy its default.
- (d) The Consultant or any employee of the Consultant or any person acting on behalf of the Consultant has:
  - I. given any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972;
  - II. at any time during the tendering process (i.e. from the date of the publication of the notice seeking expressions of interest to the date of the award of the Contract), directly or indirectly canvassed any member or official of the Council concerning the acceptance of any proposal in respect of the Contract;
  - III. directly or indirectly obtained or attempted to obtain information from any member or official of the Council concerning any other proposal submitted by any other person in respect of the formation of the Contract;
  - IV. committed, or attempted to commit, or failed to prevent, any offence under, but not limited to, the Acts of Parliament listed in Clause 20.2.
- (e) The Consultant compounds or arranges with his creditors whilst insolvent or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.
- (f) A mortgagor takes possession of the whole or a substantial part of the Consultant's property or assets or an administrator is appointed to the same.
- (g) An order is made, or a resolution passed, for the winding up of the Consultant.

#### 14.3 The Consultant may terminate the Contract if:

- (a) the Council is in breach of any of its obligations under clauses 6.1 and/or 6.2 but only after first giving the Council a reasonable opportunity to remedy its breach save that nothing in this provision shall relieve the Council of any obligation to pay interest; or
- (b) the Consultant is professionally obligated to cease acting for the Council.

## 15 Termination consequences

- 15.1 In the event of the Contract being terminated for any of the reasons contained in Clause 14.2 above (that is, for fault) the Council will:

- (a) cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of the Consultant's engagement shall have been calculated; and
  - (b) be entitled to employ and pay other persons to provide and complete the provision of the Services or any part thereof; and
  - (c) be entitled to deduct from any sum or sums that would but for this Clause 15 have been due from the Council to the Consultant under this Contract or any other contract or agreement, or be entitled to recover the same from the Consultant as a debt, together with any consequent loss or damage to the Council. Such loss or damage will include the reasonable costs to the Council of the time spent by its officers in terminating the Contract, and in making alternative arrangements for the provision of the Services or any part thereof; and
  - (d) calculate the cost of any loss and/or damage and other costs arising from the Council's termination of the Contract and deduct the same from any sum or sums, which may otherwise be due to the Consultant. The Council will pay to the Consultant any balance shown as due to the Consultant or if appropriate will recover any balance shown due to the Council as debt.
- 15.2 The rights of the Council under this Clause 15 are in addition to and without prejudice to any other rights the Council may have against the Consultant.
- 15.3 In the event that the Consultant terminates the Contract under the provisions of Clause 14.3(a) it shall be entitled to recover its reasonable expenses from the Council of recovering its unpaid invoices.
- 15.4 In the event that the Consultant terminates the Contract under the provisions of Clause 14.3(b) it shall provide the Council with reasonable assistance in implementing an orderly transition to a new consultant or service provider.
- 15.5 The termination of the Contract, howsoever arising, will be without prejudice to any rights or obligations theretofore accrued or to any provisions which are expressed to be performed after or to survive the termination of this Contract.
- 16 Delivery up of documents on termination**
- 16.1 Subject always to Clause 4.4, the Consultant or his personal representative shall upon the termination of his engagement immediately deliver up to the Council all correspondence documents specification papers and property belonging to the Council which may be in his possession or under his control.
- 17 Transfer of Undertakings (Protection of Employment) [TUPE]**
- 17.1 It is not anticipated that TUPE will apply at the expiry or termination of the Contract but if it does the Parties will comply with their respective obligations under the TUPE Regulations and will cooperate with each other in providing such information as the

other Party reasonably desires or requires in determining whether and to what extent TUPE may apply and providing TUPE information (to the extent permissible in law) to third parties who may have an interest in receiving it).

## **18 Force Majeure**

- 18.1 If either Party fails to carry out their respective obligations under this Contract as a result of force majeure then that Party shall not be liable under this Contract for such failure provided the affected party shall have given the other notice that such failure is the result of force majeure within 5 business days of such failure occurring.
- 18.2 If an event of force majeure occurs then the Council and the Consultant shall meet to discuss how best to continue to provide the Services until the force majeure event ceases, which may include the Council providing the Consultant with assistance, where possible.

## **19 Status of the Consultant**

- 19.1 During the Term the Consultant shall be an independent consultant and not an employee of the Council, and the Consultant must not represent to anyone, nor allow any of his employees or agents to represent to anyone, that they are agents or servants of the Council.
- 19.2 In such capacity the Consultant shall bear exclusive responsibility for the payment of his national insurance contributions as a self-employed person and for discharge of any income tax and VAT liability arising out of remuneration for his work performed by him under this Contract.

## **20 Anti-fraud, Corruption and Modern Slavery**

- 20.1 It is the duty of the Consultant to be aware of the Council's policies and codes of conduct to combat fraud and corruption perpetrated by employees abusing their position and by others who may attempt to obtain the Council's assets or services to which they are not entitled. In this respect the Consultant should seek advice from the Chief Internal Auditor, Civic Centre, 6 Brixton Hill London SW2 1EG.
- 20.2 The Consultant shall have and maintain adequate procedures in place to prevent fraud, bribery, money-laundering and corruption in line with legislation including, but not limited to, the Terrorism Act 2000, the Proceeds of Crime Act 2002, the Money Laundering Regulations, and the Bribery Act 2010.
- 20.3 The Consultant shall have and maintain adequate procedures, policies and rules on corporate entertainment and gifts, and shall ensure that its staff receives training in relation to those policies and rules.
- 20.4 The Consultant shall comply with the conditions of employing foreign nationals under the Asylum and Nationality Act 2006 and any succeeding or replacement legislation.

20.5 The Consultant shall comply with the Modern Slavery Act 2015 and shall have and shall maintain in place throughout the Contract Term a whistleblowing policy for its staff and sub-contractors to blow the whistle on any suspected breach of compliance with the procedural requirements of the Act or modern slavery offence.

20.6 Breach of any of Clauses 20.2, 20.3, 20.4 or 20.5 will usually constitute a breach incapable of remedy within the meaning of Clause 14.2(a) justifying immediate termination but the Authorised Officer may deem it capable of remedy within his absolute discretion and only if it is lawful to do so.

## **21 Variations**

21.1 A variation to this Contract (including to the scope and nature of the Services) shall only be valid if it has been agreed in writing and signed by both Parties.

21.2 The Consultant shall not make a variation or supply work not specified without the written authority of the Authorised Officer.

## **22 Data Protection and Freedom of Information**

22.1 Throughout this Clause 22 the Council is referred to as Controller and the Consultant is referred to as Processor. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Consultant is the Processor unless otherwise specified in Schedule 4 or in any other part of the Contract or variation. The only processing that the Processor is authorised to do is listed in Schedule 4 ('Schedule of Processing, Personal Data and Data Subjects') by the Controller and may not be determined by the Processor.

22.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

22.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

22.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule 4, unless the Processor is required to do otherwise by Law. If it is so required the Processor

shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;

- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that :
  - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 4);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this clause;
    - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor 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 Controller in meeting its obligations); and

- (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
  - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
- 22.5 Subject to Clause 22.6, the Processor shall notify the Controller immediately if it:
  - (a) receives a Data Subject Request (or purported Data Subject Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Loss Event.
- 22.6 The Processor's obligation to notify under Clause 22.5 shall include the provision of further information to the Controller in phases, as details become available.
- 22.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 22.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
  - (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Data Loss Event;
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.



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

- (a) the Controller determines that the processing is not occasional;
- (b) the Controller 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; or
- (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

If the Processor employs fewer than 250 staff and considers that it should be exempted from the requirements of this Clause 22.8 it shall so notify the Controller, and the Controller shall determine whether the Processor should be exempted and direct the Processor accordingly.

22.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

22.10 Each Party shall designate its own Data Protection Officer (within the meaning of the Data Protection Legislation) if required by the Data Protection Legislation.

22.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

- (a) notify the Controller in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Schedule such that they apply to the Sub-processor; and
- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

22.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

22.13 The Controller may, at any time on not less than 14 days' notice, revise this Clause 22 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

22.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 14 days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

- 22.15 Where the Parties include two or more Joint Controllers as identified in Schedule 4 (if so identified) in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement in replacement of the relevant provisions of this Clause 22 for the Personal Data under Joint Control.
- 22.16 The Council has a number of obligations under the Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations (EIR) to provide information of its functions where a person has made a request, unless the Freedom of Information Act 2000 or the EIR exempts the requested information from such provision. The Consultant and his sub-contractors shall co-operate with the Council in respect of any request affecting or related to the provision of the Services by among other things providing written responses to requests as required by the Authorised Officer. The Consultant warrants to use all reasonable endeavours to help the Council meet its obligations under the FOIA and the EIR.

## **23 Equal Opportunities**

- 23.1 The Consultant shall use all reasonable endeavours to comply with all statutory provisions, statutory instruments, rules, regulations and bye-laws relating to equality and discrimination including, but not limited to, the Equality Act 2010 ('the Act') and shall take all reasonable steps to ensure that its employees or agents do not discriminate against any person because of any Protected Characteristic within the meaning of the Act.
- 23.2 In the event that any finding of unlawful discrimination by the Consultant during the Contract Period, or of an adverse finding in any formal investigation, the Consultant shall inform the Council of this finding and the steps it proposes to take to prevent repetition of the unlawful discrimination.
- 23.3 The Consultant shall provide such information as the Council may reasonably request for the purpose of assessing the Consultant's compliance with this Clause 23.

## **24 Policy documents**

- 24.1 The Consultant shall ensure that its staff are fully conversant with and abides by all of the Council's policies which are relevant to the performance of the Services and which have been brought to its attention including but not limited to Lambeth's policy on whistleblowing.

## **25 Disclosure and Barring Service / Criminal Records**

- 25.1 The Consultant warrants that he is a fit and proper person to undertake the Services
- 25.2 The Consultant warrants that where the Services require the Consultant to come into regular contact with vulnerable adults, its staff and sub-contractors will have undergone appropriate checks with the Disclosure and Barring Service and that the results of those checks were satisfactory.

## **26 Complaints in Respect of Service Provision**

- 26.1 The Consultant shall deal with any complaints received from whatever source in a

prompt, courteous and efficient manner and shall keep a written record of all complaints received and of the action taken in relation to such complaints. Such records shall be kept available for inspection by the Authorised Officer at all reasonable times. The Consultant shall notify the Authorised Officer forthwith in writing of all complaints received and of all steps taken in response thereto.

- 26.2 Where the Authorised Officer receives any information or complaint about an employee, servant or agent of the Consultant in connection with the Services, he may direct that the individual in question is withdrawn from engagement in the Services pending an investigation if in his opinion such a direction is required to maintain the confidence of the Council and/or Service Users in the performance of the Services. The Council shall not be responsible for any costs or loss arising from such a direction.

## **27 Disputes**

- 27.1 If any dispute or difference arises out of this Contract the parties shall meet and attempt to resolve all such disputes or differences. If within 30 days such disputes or differences cannot be resolved then the parties with the assistance of the Centre for Dispute Resolution seek to resolve the dispute or difference amicably by using an alternative dispute resolution ("ADR") procedure acceptable to both parties.
- 27.2 If either party fails or refuses to participate in the ADR procedure, or in the event the dispute or difference is not resolved to the satisfaction of both parties within 30 days after it has arisen, the dispute or difference shall be referred to a sole arbiter appointed under the Rules of the Chartered Institute of Arbitrators.

## **28 Best Value and Policy Themes**

- 28.1 The Consultant shall assist the Council in its Best Value duty in the performance of the Services.

## **29 Committee Meetings and other meetings**

- 29.1 The Consultant shall, if required (and only to the extent reasonable and proportionate), attend Council and committee meetings, meetings of the Executive, meetings with members of task forces and other meetings, including but not limited to Scrutiny Committees. If required, the Consultant shall supply written reports to committees, the Executive and other bodies with the Council. If questions are asked of the Consultant at such meeting the Consultant answer truthfully and accurately shall use his best endeavours to include all relevant matters either orally at the meeting or at such a time as may be directed by the committee or other body.

## **30 Local Authority Functions**

- 30.1 Nothing in this Contract shall prejudice or affect the Council's rights, powers, duties and obligations in relation to the exercise of its functions as a local authority.

## **31 Waiver**

- 31.1 Failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Contract shall not be a waiver of them or of the right at any

time subsequently to enforce all terms and conditions of this Contract, nor shall such failure create an estoppel.

**32 Supersedes prior agreements**

- 32.1 This Contract supersedes any prior contracts or agreements between the parties to provide the services whether written or oral and any such prior contracts or agreements are cancelled as at the Commencement Date but without prejudice to any rights that have already accrued to either of the parties

**33 Entire Contract**

- 33.1 Each party acknowledges that this Contract, its schedules and any amendments or variations that may be agreed in writing by both parties, contains the whole agreement between parties relating to the subject matter of the Contract.

**34 Notices**

- 34.1 Any notice or other communications requiring to be served under or in connection with the Contract shall be in writing and shall be delivered to the registered offices at the addresses stated in the Contract or as otherwise specified in the Contract.
- 34.2 Any such notice shall be delivered by hand or sent by recorded first class post and shall conclusively be deemed to have been given or received at the time of delivery.
- 34.3 The parties shall comply with the terms of any notice specifying a breach of the provisions in the Contract and requiring the breach to be remedied.

**35 Joint and Several**

- 35.1 Where the Services are being provided by a Consortium each and every member of the Consortium shall be jointly and severally liable under this Contract

**36 Assignment and Sub-Contracting**

- 36.1 The Council shall be entitled to assign the benefit of the Contract or any part thereof and shall give written notice of any assignment to the Consultant.
- 36.2 The Consultant shall not:
- (a) assign the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof;
  - (b) sub-contract the provision of the Services or any part thereof to any person without the prior written consent of the Authorised Officer. Such consent shall be at the discretion of the Authorised Officer and, if given, shall not relieve the Consultant from any liability or obligation under the Contract. The Consultant shall be responsible for the acts, defaults or neglect of any sub-contractor, its employees or agents in all respect as if they were the acts, defaults or neglect of the Consultant.

**37 Third Parties**

37.1 Neither party intends to confer any right or benefit upon a third party and for the avoidance of doubt, the provisions of the Contract (Rights of Third Parties) Act 1999 are expressly excluded from this Contract.

**38 Governing Law**

38.1 This Contract shall be governed by English law.

<b>Signed for and on behalf of the Council (1)</b>  Name:  Position:  Signature:	<b>Signed for and on behalf of the Consultant</b>  Director Name:  Position:  Signature:
<b>Signed for and on behalf of the Council (2)</b>  Name:  Position:  Signature:	<b>Consultant Director's signature witnessed by:</b>  Name:  Signature:

## **SCHEDULE 1**

### **SERVICE SPECIFICATION**

DRAFT

## **SCHEDULE 2**

### **CONTACT DETAILS**

The Consultant's Representative:

For general queries in the absence of the named officer:

The Council's Authorised Officer shall be:

For general queries in absence of the named officer.

## **SCHEDULE 3**

### **PRICING DOCUMENT AND PAYMENT TERMS**

#### **PRICING**

[INSERT PRICING]

#### **PAYMENT TERMS**

1. The Council operates an electronic only policy for issuing Purchase Orders and receiving invoices from service providers, consultants and contractors through an internet portal managed in partnership with the Council by a third party provider.
2. The electronic portal is offered free of charge to service providers, consultants and contractors. The Council will direct the third party partner to make contact with the Consultant in order to create an account within the electronic portal to enable them to invoice the Council.
3. The Consultant will be able to view their Purchase Orders and the status of their invoices within the electronic portal in real time.
4. Both the Council and the Consultant shall adhere to the following procedure in respect of invoicing and payments in respect of the Services:
  - (a) The Consultant shall submit to the Council each month (or as otherwise agreed by the Parties in writing) an invoice, by electronic means through the portal only setting out the sums for each type of work together with a record detailing the work carried out, in accordance with the prices tendered and;
  - (b) Once the Council agrees the details of the electronic invoice and the work record it will arrange payment, which will be made within 30 days of invoice date unless disputed by the Council.
  - (c) Where the Council disputes the amounts entered on an invoice the parties shall discuss the differences and the Consultant shall submit such further information as required by the Council to verify the invoice sum.
  - (d) Once agreed, the Consultant shall submit a corrected Invoice as agreed pursuant to Clause 4(a), above.
5. Invoices submitted via the internet portal shall be deemed to have been received on the next working day from the date of transmission.
6. Invoices submitted by any other means shall be deemed to have been received only once those invoices reach the appropriate payment officer within the Council.



## SCHEDULE 4

### SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS

This Schedule shall be completed by the Controller, who may take account of the view of the Processors; however, the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: Matt Ginn, Interim Information Governance Manager at: [infogov@lambeth.gov.uk](mailto:infogov@lambeth.gov.uk), or any replacement or substitute Data Protection Officer at the relevant time and who should in the first instance be contacted at [infogov@lambeth.gov.uk](mailto:infogov@lambeth.gov.uk).
2. The contact details of the Processor's Data Protection Officer are: **[insert Contact details]**.
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule 4.

Description	Details
Identity of the Controller and Processor	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Consultant is the Processor in accordance with Clause 22.1.</p> <p>[Guidance: You may need to vary this section where (in the rare case) the Customer and Consultant have a different relationship. For example where the Parties are Joint Controller of some Personal Data:</p> <p>"Notwithstanding Clause 22.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <p>[Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]</p> <p>In respect of Personal Data under Joint Control, Clause 22.1 – 22.15 will not apply and the Parties agree to put in place a Joint Controller Agreement in the form advised by any current Policy Procurement Note instead."</p>
Subject matter of the processing	<p>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</p> <p>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public. ]</p>

Duration of the processing	[Clearly set out the duration of the processing including dates]
Nature and purposes of the processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes.</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</p>
Type of Personal Data being Processed	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]
Categories of Data Subject	[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.]
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	[Describe how long the data will be retained for, how it be returned or destroyed]