**Schedule 2**

**COTSWOLD DISTRICT COUNCIL**

**CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES**

These Conditions shall apply to all Contracts for the purchase of Consultancy Services by Cotswold District Council which shall be deemed to be incorporated therein, and may be varied only by the written agreement of the Council. These Conditions shall prevail over any terms or conditions put forward at any time by the Contractor which shall not form any part of the Contract unless specifically agreed in writing by the Council

**1. DEFINITIONS**

In these Conditions:

**Bribery Laws** means the Bribery Act 2010 and all other applicable UK Legislation, regulations and codes in relation to bribery or corruption in any other relevant jurisdiction

**Contract** means the agreement in respect of the Services between the Council and the Contractor consisting of the Tender Brief, these Conditions of Contract and the Tender. In the event of ambiguity, conflict or contradiction between these documents the conflict will be resolved according to the following order of priority:

1. the Tender Brief

2. these Conditions of Contract

3. the Tender

**Contract Price** means the charges for the Services provided by the Contractor as set out in the Tender

**Contractor** means the consultant, person, firm or company to whom the Contract is issued;

**Council** means Cotswold District Council;

**Services** mean the services to be provided by the Contractor as set out in the Tender Brief and the Tender;

**Site / Premises / Locality** means the location where the Services are to be performed, as specified in the Tender Brief; (this may be District wide, or in the case of consultancy or intellectual services a location may not be relevant)

**Tender Brief** means the Council’s Tender Brief dated [ ]

**Tender** means the Contractor’s Tender dated [ ]

**2. THE SERVICES**

2.1 The Contractor shall perform the Services in accordance with the Contract, with due care, skill and ability, using suitably qualified and experienced personnel, complying with any performance standards and timescales referred to in the Contract.

2.2 The Contractor shall provide the Council with such reports of its work on the Services at such intervals and in such form as the Council may from time to time require.

2.3 The Contractor shall use reasonable endeavours to ensure that it is available at all times on reasonable notice to provide such assistance or information as the Council may require.

2.4 The Council reserves the right by notice to the Contractor to modify its requirements in relation to the Services, and any alteration to the Contract fee or the completion date arising by reason of such modification shall be agreed between the parties in writing. Any such variation may include (but shall not be restricted to) additions, omissions, alterations and substitutions to the Services, and changes in quality, form, character, kind, timing, method or sequence of the Services.

2.5 Save as otherwise provided herein, no variation of the Services as provided for in Condition 2.4 hereof shall be valid unless given or confirmed in writing by the Council, provided that if for any reason the Council shall instruct such variation orally in the first instance, the Contractor shall comply with such oral instruction but it must be confirmed in writing by the Council within 2 working days of the giving of such oral instruction, failing which the variation made by such oral instruction shall cease to have effect on the expiry of the said 2 working day period.

2.6 Where any such variation of the Services made in accordance with this Condition has affected or may affect the costs incurred by the Contractor in providing the Services, the Contractor will notify the Council in writing of the effect which it has had or may have on those costs and such notification shall be considered by the Council; taking all of the relevant facts into account (including such information as may be provided by the Contractor in respect of the effect which such variation has had or may have on the costs incurred by the Contractor in providing the Services) the Council may authorise such alteration to the sums to be paid to the Contractor in accordance with the provisions of the Contract as are, in the Council’s opinion, appropriate and reasonable in the circumstances.

**3. CONTRACTOR’S STATUS**

3.1 In carrying out the Services the Contractor shall be acting as principal and not as the agent of the Council.

Accordingly,

(a) the Contractor shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Council or is able to bind the Council in any way, and

(b) nothing in this Contract shall impose any liability on the Council in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Council to the Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of the Council, its staff or agents.

**4. CONTRACTOR’S PERSONNEL**

4.1 The Contractor shall make available for the purposes of the Services any individuals named in the Contract as key personnel. The Council may at any time by notice to the Contractor designate any person(s) concerned with the Services or any part of it as key personnel. The Contractor shall not without the prior written approval of the Council make any changes in the key personnel.

4.2 If access to any premises under the control of the Council is required the Contractor shall take the steps reasonably required to prevent unauthorised persons being admitted to the Premises.

4.3 The decision of the Council as to: whether any person is not to become involved in or is to be removed from involvement in the Services; or the designation or approval of key personnel; or is to be admitted to or is to be removed from Premises under the control of the Council, or whether the Contractor has furnished the information or taken the steps required of him by this Condition 4, shall be final and conclusive.

4.3 The Contractor shall bear the cost of any notice, instruction or decision of the Council under this condition.

**5. TIME OF PERFORMANCE**

5.1 The Contractor shall begin performing the Services on the date(s) stated in the Contract, or as otherwise agreed in writing between the Council and the Contractor, and shall complete the Services by the date stated in the Contact or continue to perform them for the period stated in the Contract (whichever is applicable).

5.2 Time shall be of the essence of the Contract and failure to deliver within the time promised or specified shall enable the Council (at its option) to release itself from any obligation to accept and pay for the Services and/or to cancel all or part of the Contract therefor, in either case without prejudice to its other rights and remedies.

5.3 The Council may by written notice require the Contractor to execute the Services in a particular order. In the absence of such notice the Contractor shall submit such detailed programmes of work and progress reports as the Council may from to time request.

5.4 Any unforeseen delays in performance of the Services should, once known of, be notified to the Council in writing, as soon as possible.

**6. PRICE, RISK, FEES AND PAYMENT**

6.1 Unless otherwise stated in the Contract, Payment shall be due 28 days after completion of the Service or after the Payment Date as set out in the Tender Brief provided that the Services have been supplied in accordance with the Contract, to the Council’s satisfaction and after receipt of detailed invoices.

6.2 VAT, where applicable, shall be shown separately on all invoices.

6.3 Where the Council has agreed to pay the Contractor fees on a time spent basis rather than a fixed contract price;

(a) The Council shall pay to the Contractor the fees at the rate specified in the Tender and

(b) The Contractor shall be entitled to be reimbursed by the Council the amount of any expenses previously agreed between the parties and confirmed in writing by the Council and reasonably and properly incurred by the Contractor in the performance of his duties hereunder subject to production of such evidence thereof as the Council may reasonably require.

6.4 The Council will not accept any increase in the Contract Price or fees specified in the Tender.

**7. HEALTH AND SAFETY**

7.1 The Contractor represents and warrants to the Council that the Contractor will comply with all current Health and Safety legislation.

**8. FREE-ISSUE MATERIALS**

8.1 Where the Council issues materials free of charge to the Contractor such materials shall remain the property of the Council. The Contractor shall maintain all such materials in good order and shall use the materials solely in connection with the Contract. The Contractor shall notify the Council of any surplus materials remaining after completion of the Services and shall dispose of them as the Council may direct. Waste of such materials arising from bad workmanship or negligence of the Contractor or any of his servants, agents or sub-contractors shall be made good at the Contractor’s expense. Without prejudice to any other of the rights of the Council, the Contractor shall deliver up such materials whether processed or not to the Council on demand.

**9. AUDIT**

9.1 The Contractor shall keep and maintain for six years after completion of the Contract records to the satisfaction of the Council of all expenditures which are reimbursable by the Council and of the hours worked and costs incurred in connection with any employees of the Contractor paid for by the Council on a time charge basis. The Contractor shall on request afford the Council or its representatives such access to those records as may be required by the Council.

**10. PATENTS AND COPYRIGHT AND INTELLECTUAL PROPERTY**

10.1 The Contractor warrants and undertakes that, except to the extent that the Services incorporate designs furnished by the Council, the Services will not infringe any patent, trade mark, registered design, copyright, intellectual property right or other right in the nature of industrial property of any third party and the Contractor shall indemnify the Council against all actions, claims, demands, costs and expenses which the Council may suffer

10.2 All rights (including intellectual property right) in any reports, documents, specifications, instructions, plans, drawings, inventions, photographs (for avoidance of doubt including negatives and digital images), models or designs whether in writing or on magnetic or other media:

(a) furnished to or made available to the Contractor by the Council shall remain vested in the Council

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

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

**11. INDEMNITY AND INSURANCE**

11.1 The Contractor shall indemnify and keep indemnified the Council, against all actions, claims, demands, costs and expenses incurred by or made against the Council, its servants or agents in respect of any loss or damage or personal injury (including death) which arises out of or in connection with this Contract.

11.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Contractor (in respect of which the Indemnity in Condition 11.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Council), the indemnity contained in Condition 11.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Council.

11.3 The Contractor shall effect and have in force and shall require any sub-contractor to have in force:

(a) employer’s liability insurance and public liability insurance in a sum of not less than £5,000,000 for any one occurrence or series of occurrences arising out of one event

(b) If the Contractor is a consultant, the Contractor shall also maintain professional indemnity insurance during the Contract period and for 6 years to cover its liability to the Council under this Contract, and, on request, shall provide to the Council copies of the policies together with satisfactory evidence of payment of premiums.

11.4 The Contractor (if an individual) represents that he is regarded by both HM Revenue and Customs and the Department of Work and Pensions as self-employed and accordingly shall indemnify the Council against any tax, national insurance contributions or similar imposition for which the Council may be liable in respect of the Contractor by reason of this Contract.

**12. EQUALITY/HUMAN RIGHTS**

12.1 The Contractor agrees to comply with the Equality Act 2010 including any codes of practice issued thereunder and to perform this Contract in a non-discriminatory manner

12.2 The Contractor agrees to assist the Council to meet its responsibility to monitor the equality of the provision of any services provided by the Council. The Council may require the Contractor to complete a questionnaire and/or provide information to the Council on the extent and quality of the Contractor’s equalities and diversity policies and practice.

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

12.4 The Contractor shall notify the Council forthwith in writing as soon as it becomes aware of any Equalities investigation or proceedings brought against the Contractor.

12.5 The Contractor shall indemnify the Council in respect of all costs, claims and demands arising from a third party claim resulting from the Contractor’s obligations under this clause.

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

12.7 The Council as a Public Authority has a positive obligation to ensure compliance with the Human Rights Act 1998 (HRA) and, as a Contractor working for and on behalf of the Council, the Contractor has a similar duty under the HRA and agrees to deliver effective and appropriate services having due regard to the HRA.

12.8 The Contractor shall indemnify the Council in respect of all costs, claims and demands arising from a third party claim resulting from the Contractors obligations under this Condition.

**13. PREVENTION OF BRIBERY**

13.1 The Council may terminate the Contract and recover any losses if the Contractor, its employees, directors, agents, representatives or anyone acting on the Contractor’s behalf do any of the following things;

(a) offers, offered, promised or gave a bribe (as defined by the Bribery Act 2010) to the Council or any of its employees or members whether prior to or after the date of this Contract concerning the negotiation, the entering into, the terms and conditions of or the performance of this Contract (even if the Contractor does not know what has been done); or

(b) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members of employees

13.2 The Contractor shall comply with the Bribery Laws, including ensuring that it has in place adequate procedures to ensure compliance with the Bribery Laws, prevent bribery and use all reasonable endeavours to ensure that:

(a) it complies with any Council Policies on bribery and corruption

(b) the Contractor’s employees, directors, agents, representatives or anyone associated or acting on the Contractor’s behalf involved in performing this Contract so comply.

13.3 The expressions ‘adequate procedures’ and ‘associated’ shall be construed in accordance with the Bribery Act 2010 and all documents published under it.

**14. TERMINATION**

14.1 The Contractor shall notify the Council in writing immediately upon the occurrence of any of the following events:

(a) where the Contractor is an individual if a petition is presented for the Contractor’s bankruptcy, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs; or

(b) where the Contractor is not an individual but is a firm or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or

(c) where the Contractor is a company, if the company passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

14.2 On the occurrence of any of the events described in paragraph 14.1 or, if the Contractor shall have committed a material breach of this Contract and (if the breach is capable of remedy) shall have failed to remedy such breach within thirty days of being required by the Council in writing to do so or, where the Contractor is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of Part Vii of the Mental Health Act 1983, the Council shall be entitled to terminate this Contract by notice to the Contractor with immediate effect.

14.3 Thereupon, without prejudice to any other of its rights, the Council may itself complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefore in any payment subsequently made to the Contractor) all materials, plant and equipment on the Site belonging to the Contractor, and the Council shall not be liable to make any further payment to the Contractor until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Contractor the costs thereof incurred by the Council (including the Council’s own costs). If this total cost to the Council exceeds the amount (if any) due to the Contractor, the difference shall be recoverable by the Council from the Contractor.

14.4 In addition to its rights of termination under paragraph 14.2, the Council shall be entitled to terminate this Contract by giving to the Contractor not less than thirty days notice to that effect.

14.5 Termination under paragraphs 14.2 or 14.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Council.

**15. RECOVERY OF SUMS DUE**

15.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under this Contract or under any other agreement or contract with the Council.

**16. ASSIGNMENT AND SUB-CONTRACTING**

16.1 The Contractor shall not assign or sub-contract any portion of the Contract without written agreement of the Council

16.2 Where the Contractor enters a sub-contract with a supplier or contractor for the purpose of performing the Contract, it shall cause a term to be included in such sub-contract which requires payment to be made to the Sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

16.3 Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to it under the Contract.

**17. NOTICES**

17.1 Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, telemessage, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Order, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

**18. DATA PROTECTION**

18.1 The Contractor will deliver effective and appropriate services having due regard to Data Protection principles and compliance with its duties under the Data Protection Act 1998 or any statutory re-enactment thereof and all regulations deriving therefrom.

18.2 In the event that the data is held by the Contractor on behalf of the Council and as a direct consequence of the contract between the parties then it will cooperate fully with the Council in the event of any data subject application and the response thereto at nil cost to the Council.

18.3 The Contractor shall indemnify the Council in respect of all third party claims resulting from the Contractor’s obligations under this Condition.

18.4 Subject to Condition 19 below the Contractor agrees to take reasonable steps to keep confidential information relating to the Council which comes into the Contractor’s possession and continue to maintain such confidentiality notwithstanding the termination of this Contract save such information that falls within the public domain.

**19. FREEDOM OF INFORMATION/ENVIRONMENTAL INFORMATION REGULATIONS**

19.1 Notwithstanding anything to the contrary contained or implied in any documents or negotiations leading to the formation of this Contract:

(a) the Council shall be entitled to publish and/or release any and all terms or conditions of this Contract, the contents of any documents and/or information relating to the formation of this Contract under the provisions of the Freedom of Information Act 2000 or Environmental Information Regulations 2004

(b) nothing contained in this Contract shall prevent the Council from disclosing and/or publishing under the provisions of the Freedom of Information Act 2000 or Environmental Information Regulations 2004 any term or conditions or information contained in or relating to the formation of this Contract.

19.2 The Contractor shall:

(a) co-operate with the Council and supply to it all necessary information and documentation required in connection with any request received by the Council under the said legislation.

(b) supply all such information and documentation at no cost to the Council and within seven days of receipt of any request.

19.3 The Contractor shall not publish or otherwise disclose any information contained in this Contract or in any negotiations leading to it without the Council’s previous written consent unless the Contractor is bound to publish and/or disclose such information under the said legislation and such information is not exempt from such disclosure and/or publication under the provisions of the said legislation

**20. ENVIRONMENTAL**

20.1 The Contractor shall in its provision of the service use working methods, equipment, materials and consumables, which minimise environmental damage. In particular the Contractor shall ensure that it fully complies with the environmental obligations laid down in the Council’s environmental policy, that it is familiar with the Council’s environmental policy supplied with the Order and that it will support and assist the Council in meeting the aims laid down in it.

**21. RETURN OF DOCUMENTATION**

21.1 On completion of this Contract or termination of this Contract for any reason all files documents and materials whatsoever (including information held electronically) created or held by the Contractor in relation to this Contract shall be delivered to the Council.

**22. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

22.1 Notwithstanding any other provisions of this Contract nothing in this Contract confers or purports to confer any right to enforce any of its terms on any person who is not a party to it

**23. HEADINGS**

23.1 The headings to Conditions shall not affect their interpretation.

**24. GOVERNING LAW**

24.1 These Conditions shall be governed by and construed in accordance with English law and the Contractor hereby irrevocably submits to the jurisdiction of the English courts.