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Request for Quote (Light)

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| Design Code – Digital Engagement MDC PO39 |

**Strictly Private & Confidential**

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# Request for Quote

## Conditions of RFQ

Mendip District Council (MDC) “The Council” invites you to submit a Quote for the requirements detailed below in accordance with the conditions outlined within this document.

## General Conditions

Your submission must be in accordance with our attached terms and conditions. Submission of your Quote will signify your acceptance of these, unless otherwise agreed by us in writing.

We are not bound to accept the lowest price submission, or any Quote, or to accept you as a sole supplier, and reserve the right to accept the whole or any part of any Quote submitted

Prices you include in your Quote are to remain fixed for the duration of the agreement.

The Council reserves the right to extend or cancel the RFQ process at any point. The Council is not liable for any costs resulting from any cancellation of this RFQ process or for any other costs incurred by those quoting for this Contract.

Quotes must be completed in the English language.

Only one Quote is permitted from each Bidder. If more than one is submitted by a Bidder, the one with the latest time of submission prior to the RFQ close date/time will be evaluated and the other(s) disregarded.

The Quote should remain valid for a minimum period of 90 days.

Any signatures must be made by a person who is authorised to commit the Bidder to the Contract.

Your full registered business name, registered company number and main office address (including your registered and operational addresses if relevant) must be provided on all documents.

Bidders should complete all Schedules where required for submission at the time of bidding to receive full consideration. No documents or variances supplied after the RFQ return date/time shall be considered unless expressly requested by the Council.

Bidders should ensure that the organisations named as references are happy to be contacted by the Council to verify the information provided within the Quote.

## Confidentiality & Publicity

The contents of this RFQ and of any other documentation sent to you in respect of this process are provided on the basis that they remain the property of the Council and must be treated as confidential.

You may not undertake any publicity activities with any part of the media or other third party in relation to this RFQ process or the Contract without the prior written agreement of the Council, including agreement on the format and content of any publicity.

## Contact Details and Deadline for Submission

Your Quote must be submitted via the procurement@mendip.gov.uk email addressby no later than the date and time set out below.

The timetable\* for the RFQ is as follows:

|  |  |
| --- | --- |
| **Stage / Action** | **Date** |
| RFQ open and documents released | **05/04/2022** |
| Clarification questions open | **05/04/2022** |
| Deadline for clarification questions | **11/04/2022 – 5pm**  |
| Final clarification responses | **13/04/2022 – 5pm** |
| Deadline for submissions in response to this document. | **19/04/2022** |
| Evaluation of submissions and post-quote clarifications | **20/04/2022** |
| Award decision and notification to suppliers | **21/04/2022** |
| Contract signature | **22/04/2022** |
| Contract start | **w/c 25/04/2022** |

\*The dates in this table are provisional, any change to this timetable will be communicated.

## Documents required for submission

The following must be included as part of your Quote. Failure to do so may result in your submission not being evaluated.

* Completion of the questions and declarations
* Completion of Sections 3-10
* Any documents or information specifically requested in the Technical Questions
* Completed Pricing Schedule
* Signed Form of Quote

Submitted documentation must be in the form in which it was sent as part of the RFQ i.e. an MS Excel form must be submitted in MS Excel; documents should not be converted to ‘.pdf’ format.

## Clarifications

If you have any queries, you are welcome to request further details via the Clarification process. Clarifications should be sought in accordance with the timescales detailed in 1.4 above.

Questions & answers will be shared with all Bidders unless the questions and answers are deemed to be commercially or otherwise sensitive.

## Contract details

The contract term is for 6 months from appointment with an option to extend for a further 3 months if necessary

Any resulting Contract will consist of the agreed Terms and Conditions, this RFQ and your submission, and will be subject to the laws of England and Wales.

Bidders are permitted to sub-contract elements of the requirements. Portions of the Works or Service to be sub-contracted must be highlighted in your Quote. However, no elements of the requirements can be sub-contracted without prior approval by the Council.

## Evaluation

The information provided as part of Section 4 (Suitability Assessment), Section 5 (Technical Questions) and Section 7 (Pricing) will be used to evaluate the successful Quote as follows.

Each submission will be subject to:

1. an initial check for compliance with all requirements of the RFQ
2. an assessment of supplier suitability – Section 4 (Pass/Fail)
3. an assessment of technical competency – Section 5 (scored)
4. an assessment of price – Section 7 (scored)

The evaluation criteria and associated weighting will be:

|  |  |
| --- | --- |
| **Award Evaluation Criteria Breakdown** | **Section Score (maximum available) as a %age** |
|  | **Main Criteria** | **Sub Criteria** |
| **Technical (Quality)** | **65%** | **-** |
| Sub-Criteria Technical | **20%** | **Availability to start on required date**  |
| Sub-Criteria Technical | **20%** | **Resources available for the project**  |
| Sub-Criteria Technical  | **20%** | **Experience of delivering of similar projects**  |
| Sub-Criteria Technical  | **5%** | **Ability to offer advice to project team on best practice and implementation of the project** |
| **Commercial (Price)** | **35%** | **-** |
| Sub-Criteria commercial | - | **Total Price of contract**  |
| **TOTAL** | **100%** |  |

The Council may undertake a Financial Assessment via our credit rating agency. We plan to use this financial appraisal to assess the risk and impact of a supplier failure.

### Technical (Quality) evaluation methodology

Quality will be measured upon evaluation of Bidders’ responses to the technical questions. All technical questions must be completed.

Your responses to each technical question will be evaluated by the evaluation panel using the following scores:

|  |  |  |
| --- | --- | --- |
| **Definition** | **Score** | **Criteria** |
| Excellent | 5 | Excellent response.Comprehensive and useful.No weakness noted.The response includes a full description of techniques and measurements to be employed. |
| Very Good | 4 | Response meets our expected requirement/standard and exceeds minimum expectations, including a level of detail which adds value to the quote.No significant weakness noted. |
| Good | 3 | Response is acceptable and meets minimum requirement but remains basic and could have been expanded upon.Response is enough but does not inspire.Reasonable probability of success, weaknesses can be readily corrected. |
| Poor | 2 | Poor response only partially satisfying requirement/standard, with deficiencies apparent.  Some useful evidence provided but response falls well short of minimum requirements. |
| Very Poor | 1 | Very poor response and not acceptable – fails to meet minimum requirement/standard; requires major revision to make it acceptable.  Only partially answers requirement, with major deficiencies and little relevant detail proposed. |
| Not Complete | 0 | Question is not answered, or the response is completely unacceptable e.g. the answer completely missed the point of the question. |

### Commercial (Price) evaluation methodology

Price will be evaluated based on the lowest price Quote achieving the maximum %age for the pricing element. Higher priced Quotes will receive a proportional score based on the amount higher they are than the lowest quoted price. The calculation is:

|  |  |  |
| --- | --- | --- |
|  | Lowest Compliant Quoted Price (A) |  |
| Price Score = | ----------------------------------------- | x Score Weighting |
|  | Supplier’s Comparative Quoted Price (B) |  |

For example, where the pricing score will comprise 35% of the overall score, where the lowest quoted price (A) is £100, and where the Bidder’s quoted price (B) is £120, the Bidder’s score would be calculated as follows:

(100/120) x 35 = 29.17%

### Award of the Contract

The Bidder’s weighted quality and price scores will be added together to give a total weighted score. The Bidder with the highest weighted score will be awarded the contract.

Where there are two Bidders with the same weighted total scores (to 2 decimal places), the provider out of the two with the highest score for pricing will be the first ranked Bidder.

The Council reserves the right to award a part contract.

The Council reserves the right to not award a contract.

The Council reserves the right to make changes of a drafting nature to the Contract Documents.

# Requirements

## General

Overview

The Council is proposing to appoint a specialist service provider to assist our Planning Policy Team in the undertaking of a highly effective programme of digital consultation and engagement as part of the production of a design code for the village of Stoke St. Michael for a period of 6 months.

There is a clear requirement from Government for all local planning authorities to prepare a design code or equivalent guidance for their area. The process of producing a code is outlined within the [**National Model Design Code (2021)**](https://www.gov.uk/government/publications/national-model-design-code)**.**

This highlights the significance of inclusive and effective engagement with local communities and other stakeholders in the production of a local design code. In response the Design Code Project Team has produced a Consultation Strategy for the design code programme and a Consultation Plan to produce a design code for the village of Stoke St. Michael within the Mendip district.

Insurance Cover

Prior to signing any Contract, the successful contractor will be required to provide evidence that the following insurances are in place

|  |  |
| --- | --- |
| Public Liability Insurance | £10 million  |
| Employer’s Liability Insurance | £5 million  |
| Professional Indemnity Insurance | £2 million  |

Insurance cover must be maintained with no lapses or breaks for the entire period of the contract and evidence of renewal must be provided before the expiry date of the current cover. The contractor will be required to provide information as to what liabilities the contractor is covered for and not covered for and what liabilities the contractor would expect the Council to be covered for.

Invoicing

Payment Terms

Invoiced monthly for works/services undertaken

Payment Days

Payment will be made within 30 days of receipt of a complete and valid invoice.

## Scope & Specification

The overall purpose of the project is to deliver effective and inclusive engagement in order to produce locally based design codes which are provably locally popular.

How this is to be achieved is outlined within the recently produced Consultation Strategy and Consultation Plan for Stoke St. Michael, both of these documents have been attached to this request. These provide detail on the following:

* Aims and objectives of the consultation
* Principles in which all aspects of the consultation will need to adhere to
* Identification of relevant stakeholders
* Methods of engagement to be used and how
* A proposed timeline for the project (specifically Stoke St. Michael)

This project will act as a pilot scheme for the future production of design codes within the district. As a result, this project will be the first time the authority has implemented the Consultation Strategy in practice.

The project team does have prior experience in delivering successful public engagement events as part of the production of a local plan, however, experience in the use of digital methods of engagement is limited.

The successful specialist provider is expected to undertake the following tasks:

* Advise the project team on the best approaches to achieving effective digital engagement throughout the project
* Produce and maintain (including regular updating of information as the project progresses) a highly accessible project website and online consultation hub
* Assist in the production and maintenance of a digital mapping engagement tool
* Assist in the production and maintenance of digital surveys relevant to the production of a design code
* Assist in the production of QR codes
* Assist in the production of consultation material in partnership with the project team
* Assist in the cross-delivery of the above with other engagement methods as identified within the Consultation Strategy.

The provider will take in lead in the production and implementation of the above digital methods of engagement and will work in partnership with the local authority project team in the delivery of a successful consultation programme for the production of the Stoke St. Michael Design Code.

The consultation period for the design code is expected to last for 6 months. During this time it is expected that the website/online hub remains accessible and will be updated. Other engagement methods will be used during specific consultation events throughout the 6 month period.

# Supplier information

All questions in this section must be answered.

|  |
| --- |
| **Supplier Information** |
| **3.1 Supplier details** | **Answer** |
| Full name of the Supplier completing the questionnaire |  |
| Registered company address |  |
| Registered company/charity or other organisation number |  |
| Registered VAT number |  |
| Name of immediate parent company |  |
| Name of ultimate parent company |  |
| Please mark ‘X’ in the relevant box to indicate your trading status | i) a public limited company  | ▢ Yes |
| ii) a limited company | ▢ Yes |
| iii) a limited liability partnership | ▢ Yes |
| iv) other partnership | ▢ Yes |
| v) sole trader | ▢ Yes |
| vi) other (please specify) | ▢ Yes |
| Please mark ‘X’ in the relevant boxes to indicate whether any of the following classifications apply to you | i)Voluntary, Community and Social Enterprise (VCSE) | ▢ Yes |
| ii) Small or Medium Enterprise (SME) | ▢ Yes |
| iii) Charity | ▢ Yes |
| iv) Sheltered workshop | ▢ Yes |
| v) Public service mutual | ▢ Yes |
| **3.2 Contact details** |
| Supplier contact details for enquiries about this submission. |
| Name |  |
| Postal address |  |
| Country |  |
| Phone |  |
| Mobile |  |
| E-mail |  |
| Are you aware of any potential conflict of interest? (Yes / No)  | [Y / N] |
| If yes, please explain |  |
| **3.3 Contact details (invoicing)** |
| Supplier contact details for enquiries about invoicing. These details will be used to generate an invite to the named contact for them to enroll your organisation and/or update your company details. |
| Name |  |
| Telephone number |  |
| Email address |  |
| **3.4 Collaboration** |
| Are you submitting a collaborative Quote? *NB a ‘collaboration’ is a formal agreement between two or more companies and will likely include an agreement/contract MoU/SLA between those companies* | [Y / N] |
| If yes, please ensure that all sections are completed by the lead bidder. Please ensure that only one submission is completed and returned to the Council, which consolidates the offering from any other party/ies you are quoting with. Please provide the name(s) of the organisation(s) you are collaborating with: |
|  |
| **3.5 Additional information** |
| Does your company voluntarily subscribe to the Real Living Wage? | [Y / N] |
| If you have supplied works/services/goods to the Council in the last 12 months, please supply your vendor number or your service contact name at the Council. If you have not, please mark as N/A. |
| Vendor number |  |
| Service contract name |  |
| Please indicate which **one** of the following you would be willing to provide:**(please indicate which one by ticking the relevant box)** |
| *A copy of your audited accounts for the most recent two years* | ▢ Yes |
| *A statement of your turnover, profit & loss account, and cash flow for the most recent year of trading* | ▢ Yes |
| *A statement of your cash flow forecast for the current year and a bank letter outlining the current cash and credit position* | ▢ Yes |
| *Alternative means of demonstrating financial status if trading for less than a year* | ▢ Yes |

# Suitability Assessment

These questions are subject to Pass/Fail criteria.

Should you fail on any individual question, your submission will be disqualified and will not progress any further. The Council may, at their discretion, investigate any of the answers post-submission.

|  |
| --- |
| **Suitability Assessment Questions (Pass/Fail)**  |
| 4.1 | The Contractor confirms their latest annual turnover is over £100k (if your company is less than 12 months old please confirm your extracted accounts from your Parent Company meet the minimum Turnover threshold). If you are the preferred bidder following evaluation you will have to provide a copy of your company accounts to support this. | ▢ Confirm |
| 4.2 | The Contractor confirms that none of their Directors or relatives has been, or is presently, a Member of the Council or an employee of the Council. | ▢ Confirm |
| 4.3 | The Contractor confirms that no legal proceedings are in progress that might affect the performance of the contract obligations and that your Organisation has not been prosecuted under EU/UK law in the last three years.If unable to confirm, please give full details below. | ▢ Confirm |
|  |
| 4.4 | The Contractor confirms that, if awarded the contract, they are willing to have the levels of insurance cover stipulated in Section 2.1. If you are the preferred bidder following evaluation you will have to provide a copy of your insurance certificates.  | ▢ Confirm |
| 4.5 | The Contractor confirms that none of their Directors or Organisation has been prosecuted (or has a pending prosecution):* for fraud, or
* under the Bribery Act 2010.

NB Where any person acting on behalf of the contractor:1. Offers, gives, or agrees to give, any Member or officer of the Council consideration of any kind as an inducement or reward with respect to the contract, or
2. Commits any offence under the Bribery Act 2010.

the contract will be cancelled, and any loss recovered. | ▢ Confirm |
| 4.6 | The Contractor confirms that, if they are the preferred bidder following evaluation, they will provide, upon request, the relevant references. | ▢ Confirm |
| ***If selected as the preferred Bidder, the Contractor must be able to provide all evidence relating to these criteria within 5 working days of being notified to this effect.*** |

# Quality (Technical Questions)

|  |
| --- |
| **Quality Questions** |
| The Technical Questions will form your quality assessment.All questions must be answered in this section within the response boxes provided in this document unless otherwise stated. Responses submitted in alternative formats and templates will be rejected. |
| 5.1 | Please provide details on what resource you would be able to commit to the delivery of the design code project. |
| **CONTRACTOR RESPONSE** |
|  |
| 5.2 | What is your understanding of the design code process and the significance of community/stakeholder engagement? |
| **CONTRACTOR RESPONSE** |
|  |
| 5.3 | What is your understanding of the established principles of good consultation and how would your programme of digital engagement adhere to these principles? |
| **CONTRACTOR RESPONSE** |
|  |
| 5.4 | How would you ensure that the digital methods of engagement can be delivered in collaboration with more ‘traditional’ methods so as to be as inclusive as possible? |
| **CONTRACTOR RESPONSE** |
|  |
| 5.5 | How would you assist in the delivery of the Consultation Strategy to ensure that the opportunities for ‘hard to reach groups’ specifically younger people, to engage in the design code process is maximised? |
| **CONTRACTOR RESPONSE** |
|  |

# Previous Experience

|  |
| --- |
| **Previous Experience** |
| The Bidder shall include details of previous experience of one contract relevant to this activity, which is either still running or has been completed within the last three years. |
| **BIDDER RESPONSE** | Example One |
| Company Name |  |
| Address |  |
| Contact Name |  |
| Telephone No. |  |
| Email |  |
| Description of the work carried out (word count 200 words) |  |
| Approximate annual contract value (£) |  |
| Contract start and end date |  |

# Pricing

All pricing submissions must be addressed both in this section within the response boxes provided and in the attached Pricing Schedule unless otherwise stated. Responses submitted in alternative formats and templates will be rejected.

This is a most economically advantageous Quote, with 65% awarded for quality/capability and 35% for the price of the works/service. Please add your pricing submission in the table.

Please note that the values you enter here within this pricing schedule are:

* the full amount to invoice the Council for - no other expenses will be accepted e.g. travel, food, vehicles, equipment, or tools. The price shall include all profit, transport, labour, materials, fuel, insurance, and all other expenses of every kind which, under the Conditions of the Contract, are borne by the Supplier.
* for all hours of all days - no uplifts will be allowed for bank holidays, weekends or unsociable hours unless otherwise stated
* fixed for the contract term
* exclusive of VAT

|  |
| --- |
| **Price** |
| The Bidder shall confirm the price (exclusive of VAT) to complete the works/services/supplies in the attached Pricing Schedule. Bidders must also complete the pricing table below. The pricing schedule summary should be submitted as part of your overall submission, as well as submitting a detailed supporting document itemising each area in detail, line by line.  |
| **BIDDER RESPONSE (PASS/FAIL QUESTION)** |
| Please confirm you have completed all items in the attached pricing schedule (Appendix B) | ▢ Yes▢ No  |
| Bidders must provide a response to each of the items set out below. **[if required]** |
| Item Description  | Itemised Cost (Excluding VAT)  |
| Produce and maintain (including regular updating of information as the project progresses) a highly accessible project website and online consultation hub |  |
| Production and maintenance of a digital mapping engagement tool |  |
| Production and maintenance of digital surveys relevant to the production of a design code |  |
| Production of QR codes where necessary throughout the project  |  |
| Assist in the production of consultation material in partnership with the project team |  |
| Assist in the cross-delivery of the above with other engagement methods as identified within the Consultation Strategy.  |  |
| Advise the project team on the best approaches to achieving effective digital engagement throughout the project  |  |
| **Total Cost** |  |

# Legal Compliance

|  |
| --- |
| Legal Compliance |
| The following documents will form any subsequent binding agreement  |
| **Form of Contract** **MDC bespoke Terms & Conditions** |
| **Agreement**The additional documents which make up the agreement are the RFQ submission, pricing table, Instructions to Bidders, Preliminaries, Preambles, General Requirements, Clarifications and any other relevant documents. |
| **Council address**Rob Palmer Mendip District Council, Cannards Grave Road, Shepton Mallet, Somerset, BA4 5BTEmail: robert.palmer@mendip.gov.ukDirect Line:     07980 728261 |
| **Review Meetings**TBC  |
| **Possible Extension of Term**Maximum period of extension is 3 months.  |

# Data Processing Schedule

* + 1. The Contractor shall comply with any further written instructions with respect to processing by the Council.
		2. Any such further instructions shall be incorporated into this Schedule.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject matter of the processing | **[insert]** |
| Duration of the processing | From commencement of contract to its termination. |
| Nature and purposes of the processing | **[insert]** |
| Type of Personal Data | **[insert]** |
| Categories of Data Subject | **[insert]** |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | **[insert]** |

# Bidder’s Warranties

Please confirm your organisation’s acceptance of the terms of this RFQ by ticking the relevant boxes below:

**Please note, should you make a submission, it will be deemed that you have accepted the below documents.**

|  |  |  |
| --- | --- | --- |
|  | **Yes** | **No** |
| We have read the RFQ documents and subject to, and in accordance with, the Council’s Purchasing terms and conditions, the Conditions of Quote and all relevant documents attached, we offer to supply and deliver the works/services/supplies specified in this submission, in the quantities and at the rate or prices shown above. | [ ]  | [ ]  |
| We confirm our submission together with the Council’s written acceptance thereof and any subsequent Contract and/or Purchase Order and/or Works Order and/or Service Schedule shall constitute a binding Contract between us. | [ ]  | [ ]  |
| We agree to abide by this submission and agree to its validity and enforceability for a period of 90 days from the date of return of this submission. | [ ]  | [ ]  |

#

# APPENDIX A – Terms & Conditions

**Consultancy agreement**

between

**MENDIP DISTRICT COUNCIL**

and

**[ *Consultant* ]**

FOR THE PROVISION OF CONSULTANCY SERVICES FOR

 THE DESIGN CODE DIGITAL ENGAGEMENT PROJECT

**THIS AGREEMENT** is dated …………………………………………….................................2022

**Parties**

**MENDIP DISTRICT COUNCIL** of Cannards Grave Road,
Shepton Mallet, Somerset, BA4 5BT (**Council**).

**[ ]** (Company Number [ ]) whose registered office is at [ ] (**Consultant**).

(Each a “Party” and together the “Parties”)

**Agreed terms**

1. **Interpretation**
	1. The definitions and rules of interpretation in this clause apply in this agreement (unless the context requires otherwise).

**Capacity:** as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

**Commencement Date:** [ ] 2022

**Confidential Information:** information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, affairs and finances of the Council for the time being confidential to the Council including, without limitation, technical data and know-how relating to the Services and/or business of the Council and information that the Consultant creates, develops, receives or obtains in connection with its Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

**Consultant Personnel:** all directors, officers, employees, agents, and consultants of the Consultant and/or of any Sub-Consultant engaged in the performance of its obligations under this agreement (if any).

**Consultants Tender or Quotation:** the Consultant’s tender or Quotation set out in Schedule 1

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

**Council Property:** all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the business or affairs of the Council and any equipment, keys, hardware or software provided for the Consultant's use by the Council during the Engagement, and any of the Council’s data or documents (including copies) produced, maintained or stored by the Consultant on the Council or the Consultant's computer systems or other electronic equipment during the Engagement.

**Data Protection Legislation:** means all applicable data protection and privacy legislation in force from time to time in the UK including the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018, as amended, the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, and the Data Protection, Privacy and Electronic Communications (Amendment) (EU Exit) Regulations 2019 (SI 2019/419.

**Data Protection Impact Assessment**: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

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

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

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

**Engagement:** the engagement of the Consultant by the Council on the terms of this agreement.

**Fees:** the fees payable to the Consultant by the Council as set out in clause 4 and Schedule 1

**Insurance Policies:** professional indemnity insurance cover, public liability insurance cover and employers liability insurance cover.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

**Invention:** any invention, idea, discovery, development, improvement or innovation made by the Consultant in the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

**Law:** any UK law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or requirements with which the Consultant is bound to comply.

**Necessary Consents:** means all approvals, certificates, authorisations, permissions, licences, permits and consents necessary from time to time for the performance of the Services.

**Pre-Contractual Statement:** any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the Engagement other than as expressly set out in this agreement or any documents referred to in it.

**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.

**Services:** the services provided by the Consultant to the Council as more particularly described in Schedule 1.

**Sub-processor:** any third Party appointed to process Personal Data on behalf of the Consultant related to this agreement

**Termination Date:** the date of termination of this agreement, however arising.

**UK GDPR:** has the meaning defined in Regulation 2 of the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419).

**Works:** all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Consultant in the provision of the Services.

**Working Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

* 1. The headings in this agreement are inserted for convenience only and shall not affect its construction.
	2. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
	3. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
	4. Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
	5. The Schedules to this agreement form part of (and are incorporated into) this agreement.

1.7 Any obligation expressed to be given to the Consultant under this agreement shall, in so far as the context permits, be construed to apply also to the Consultant’s Personnel and any other employees, agents, representatives or sub-contractors duly appointed by the Consultant in relation to the Services or this agreement generally.

1. **Term of engagement**
	1. The Council shall engage the Consultant and the Consultant shall provide the Services on the terms of this agreement.
	2. The Engagement shall be deemed to have commenced on the Commencement Date and shall continue for [ ] months unless terminated earlier by either party giving to the other not less than [4 weeks'] prior written notice.
	3. The parties may agree to extend the Engagement for such additional period(s) as are agreed in writing between the parties provided that the Council serves written notice on the Consultant 1 month before the end of the contract period that it wishes to extend the Engagement.
2. **Duties**
	1. During the Engagement the Consultant shall ensure that it and the Consultants Personnel shall:
		1. provide the Services with all due care, skill and ability and in delivery of the Services to use its best endeavours to promote the interests of the Council;
		2. comply with all applicable laws and reasonable policies of the Council in performance of the Services;
		3. devote such time to the carrying out of the Services together with such additional time if any as may be necessary for their proper performance as set out in Schedule 1; and
		4. promptly give to the Council all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services or business of the Council.
	2. If the Consultant is unable to provide the Services for any reason whatsoever it shall advise the Council of that fact as soon as reasonably practicable. For the avoidance of doubt, no Fees shall be payable in accordance with clause 4 in respect of any period during which the Services are not provided.
	3. The Consultant shall use reasonable endeavours to ensure that the Consultant Personnel are available at all times on reasonable notice to provide such assistance or information as the Council may require.
	4. Unless it has been specifically authorised to do so by the Council in writing, the Consultant shall not:
		1. have any authority to incur any expenditure in the name of or for the account of the Council; or
		2. hold itself out as having authority to bind the Council.
	5. The Consultant shall comply with all reasonable standards of safety and comply with the Council's health and safety procedures from time to time in force at any Council premises where the Services are provided and report to the Council any unsafe working conditions or practices.
	6. The Consultant will perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services.
	7. The Consultant may not assign the benefit of this agreement or subcontract the Services without the prior written consent of the Council.
3. **Fees**
	1. The Council shall pay the Consultant the Fees set out in Schedule 1, monthly in arrears. The Consultant shall submit to the Council an invoice which gives details of the Services the Consultant has provided and the amount of the Fees payable (plus VAT, if applicable) for the Services. The Consultant must ensure that it has received a valid order form or purchase order number prior to commencing the provision of any Consultancy Services. The Council shall have no obligation to make any payment unless the purchase order number is stated on the Consultant’s invoice.
	2. In consideration of the provision of the Services during the Engagement, the Council shall pay each undisputed invoice submitted by the Consultant in accordance with clause 4.1 within 30 days of receipt.
	3. The Council shall be entitled to set off and deduct from the Fees (and any other sums) due to the Consultant any sums that the Consultant may owe to the Council at any time.
	4. Payment in full or in part of the Fees claimed under clause 4 or any Expenses claimed under clause 5 shall be without prejudice to any claims or rights of the Council against the Consultant in respect of the provision of the Services.
4. **Expenses**
	1. The Consultant shall be responsible for meeting all expenses properly and necessarily incurred by the Consultant Personnel in the course of the Engagement.
5. **Other activities**

Nothing in this agreement shall prevent the Consultant from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that:

* + 1. such activity does not cause a breach of any of the Consultant's obligations under this agreement;
		2. the Consultant shall not engage in any such activity if it relates to a business which is similar to or in any way competitive or conflicts with any services provided by the Council without the prior written consent of the Council; and
		3. the Consultant shall give appropriate priority to the provision of the Services to the Council in relation to any other business activities undertaken by the Consultant during the course of the Engagement.
1. **Confidential information**
	1. The Consultant acknowledges that in the course of the Engagement it will have access to Confidential Information. The Consultant has therefore agreed to accept the restrictions in this clause 7.
	2. The Consultant shall not (except in the proper course of its duties) either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use all reasonable endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:
		1. any use or disclosure authorised by the Council or required by law; or
		2. any information which is already in, or comes into, the public domain otherwise than through the Consultant's unauthorised disclosure.
	3. At any stage during the Engagement, the Consultant will promptly on request return to the Council all and any Confidential Information of the Council or any Council Property in its possession.
2. **Data protection and Freedom of Information**
	1. The Consultant consents to the Council holding and processing Personal Data relating to the Consultant Personnel for legal and administrative purposes and in particular to the processing of any Personal Data relating to the Consultant as appropriate:
	2. The Consultant consents to the Council making such information available to its professional advisers, regulatory authorities and governmental or non-departmental public bodies.
	3. The Parties acknowledge that in relation to the provision of the Services for the purposes of the Data Protection Legislation, the Council is the Controller and the Consultant is the Processor. The only processing that the Consultant is authorised to do is listed in Schedule 2 by the Council and may not be determined by the Consultant.
	4. The Consultant shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
	5. The Consultant shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, 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.
	6. The Consultant shall, in relation to any Personal Data processed in connection with its obligations under this agreement:
		1. process that Personal Data only in accordance with Schedule 2, unless the Consultant is required to do otherwise by Law. If it is so required the Consultant shall promptly notify the Council 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 Council 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 Consultant Personnel do not process Personal Data except in accordance with this agreement (and in particular Schedule 2);
			2. it takes all reasonable steps to ensure the reliability and integrity of any Consultant Personnel who have access to the Personal Data and ensure that they:
				1. are aware of and comply with the Consultant’s duties under this clause;
				2. are subject to appropriate confidentiality undertakings with the Consultant 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 Council or as otherwise permitted by this agreement; and
				4. have undergone adequate training in the use, care, protection and handling of Personal Data;
		4. not transfer Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
			1. the Council or the Consultant has provided appropriate safeguards in relation to the transfer in accordance with the Data Protection Legislation (UK GDPR Article 46 or Sections 17A, 17B, or 17C of the Data Protection Act 2018) as determined by the Council;
			2. the Data Subject has enforceable rights and effective legal remedies;
			3. the Consultant 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 all reasonable endeavours to assist the Council in meeting its obligations); and
			4. the Consultant complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
		5. at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the agreement unless the Consultant is required by Law to retain the Personal Data.
	7. Subject to clause 8.8, the Consultant shall notify the Council 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 agreement;
		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.
	8. The Consultant’s obligation to notify under clause 8.7 shall include the provision of further information to the Council in phases, as details become available.
	9. Taking into account the nature of the processing, the Consultant shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 8.7 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
		1. the Council with full details and copies of the complaint, communication or request;
		2. such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
		3. the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
		4. assistance as requested by the Council following any Data Loss Event;
		5. assistance as requested by the Council with respect to any request from the Information Commissioner’s Office, or any consultation by the Council with the Information Commissioner's Office.
	10. The Consultant shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Consultant employs fewer than 250 staff, unless:
		1. the Council determines that the processing is not occasional;
		2. the Council determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
		3. the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
	11. The Consultant shall allow for audits of its Data Processing activity by the Council or the Council’s designated auditor.
	12. The Consultant shall designate a Data Protection Officer if required by the Data Protection Legislation.
	13. Before allowing any Sub-processor to process any Personal Data related to this agreement, the Consultant must:
		1. notify the Council in writing of the intended Sub-processor and processing;
		2. obtain the written consent of the Council;
		3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 8 such that they apply to the Sub-processor; and
		4. provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
	14. The Consultant shall remain fully liable for all acts or omissions of any Sub-processor.
	15. The Council 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 agreement).
	16. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Council may on not less than 30 Working Days’ notice to the Consultant amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.
	17. The Consultant shallprovideall necessary assistance and cooperation (at no additional charge) as reasonably requested by the Council to enable the Council to comply with its obligations under the Freedom Of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR).

The Consultant shall:

8.17.1 transfer to the Council all Requests for Information (as defined in the FOIA) relating to this Agreement that it receives as soon as practicable and in any event within two Working Days of receipt;

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

8.17.3 not respond directly to a Request for Information unless authorised in writing to do so by the Council.

* 1. The Consultant acknowledges that the Council may in certain circumstances be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the Consultant. The Council shall take all reasonable steps to notify and consult the Consultant about all Requests for Information (in accordance with the Secretary of State for Constitutional Affairs' section 45 Code of Practice on the Discharge of the Functions of Public Authorities) under Part 1 of the FOIA and the Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (together the **Codes**) to the extent that it is permissible and reasonably practical for it to do so and shall take the Consultant's views into account regarding the relevant Request for Information.
	2. For the purpose of Clause 8.17, "**Information**" has the meaning given under section 84 of the FOIA and the meaning attached to "environmental information" contained in section 2 of the EIR as appropriate.
1. **Intellectual property**
	1. The Consultant hereby assigns to the Council all existing and future Intellectual Property Rights in the Works and the Inventions and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this agreement, the Consultant holds legal title in these rights and inventions on trust for the Council.
	2. The Consultant undertakes:
		1. to notify to the Council in writing of full details of any Inventions promptly on their creation;
		2. to keep confidential details of all Inventions;
		3. whenever requested to do so by the Council and in any event on the termination of the Engagement, promptly to deliver to the Council all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Works and the process of their creation which are in its possession, custody or power;
		4. not to register nor attempt to register any of the Intellectual Property Rights in the Works, nor any of the Inventions, unless requested to do so by the Council; and
		5. to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the Works and the Inventions has passed, or will pass, to the Council.
	3. The Consultant warrants to the Council that:
		1. it has not given and will not give permission to any third party to use any of the Works or the Inventions, nor any of the Intellectual Property Rights in the Works;
		2. it is unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and
		3. the use of the Works or the Intellectual Property Rights in the Works by the Council will not infringe the rights of any third party.
	4. The Consultant agrees to indemnify the Council and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Council, or for which the Council may become liable, with respect to any intellectual property infringement claim or other claim relating to the Works or Inventions supplied by the Consultant to the Council during the course of providing the Services. The Consultant shall maintain adequate liability insurance coverage and ensure that the Council’s interest is noted on the policy, and shall supply a copy of the policy to the Council on request. The Council may at its option satisfy this indemnity (in whole or in part) by way of deduction from any payments due to the Consultant.
	5. The Consultant waives any moral rights in the Works to which it is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such Works or other materials, infringes the Consultant's moral rights.
	6. The Consultant acknowledges that, except as provided by law, no further fees or compensation other than those provided for in this agreement are due or may become due to the Consultant in respect of the performance of its obligations under this clause 9.
	7. The Consultant undertakes, at any time either during or after the Engagement, to execute all documents, make all applications, give all assistance and do all acts and things as may, in the opinion of the Council, be necessary or desirable to vest the Intellectual Property Rights in, and to register them in, the name of the Council and to defend the Council against claims that works embodying Intellectual Property Rights or Inventions infringe third party rights, and otherwise to protect and maintain the Intellectual Property Rights in the Works and the Inventions.
	8. The Consultant hereby irrevocably appoints the Council to be its attorney to execute and do any such instrument or thing and generally to use its name for the purpose of giving the Council or its nominee the benefit of this clause 9.
2. **Insurance and liability**
	1. The Consultant shall have liability for and shall indemnify the Council during the course of the Engagement and at any time after the Termination Date for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Consultant of the terms of this agreement including any negligent or reckless act or omission or default by itself or any Consultant Personnel, in the provision of the Services.
	2. The Consultant shall maintain in force during the Engagement full and comprehensive Public Liability, Employers Liability and Professional Indemnity Insurance Policies as outlined in Schedule 1. The Consultant shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to the Council and that the level of cover and other terms of insurance are acceptable to and agreed by the Council.
	3. The Consultant shall on request supply to the Council copies of such Insurance Policies and/or evidence that the relevant premiums have been paid.
3. **Termination**
	1. Notwithstanding the provisions of clause 2.2, the Council may terminate the Engagement with immediate effect with no liability to make any further payment to the Consultant (other than in respect of amounts accrued before the Termination Date) if at any time the Consultant:
		1. commits any material breach of any term of this agreement and (if such breach is capable of remedy) fails to remedy that breach within a period of 7 Working Days after notice in writing to do so; or,
		2. commits any serious or repeated breach or non-observance of any of the provisions of this agreement in such a manner as to reasonably justify the opinion of the Council that the Consultant’s conduct is inconsistent with it having any intention or ability to give effect to the terms of this agreement, or,
		3. refuses or neglects to comply with any reasonable and lawful directions of the Council; or
		4. is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed) or commits any fraud or dishonesty or acts in any manner which in the opinion of the Councilbrings or is likely to bring the Consultant or the Council into disrepute or is materially adverse to the interests of the Council; or
		5. is in the reasonable opinion of the Council negligent or incompetent in the performance of the Services; or
		6. suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
		7. commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
		8. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Consultant other than for the sole purpose of a scheme for a solvent amalgamation of the Consultant with one or more other companies or the solvent reconstruction of the Consultant;
		9. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Consultant;
		10. the holder of a qualifying floating charge over the assets of the Consultant has become entitled to appoint or has appointed an administrative receiver;
		11. a person becomes entitled to appoint a receiver over the assets of the Consultant or a receiver is appointed over the assets of the Consultant;
		12. a creditor or encumbrancer of the Consultant attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
		13. the Consultant suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
		14. any warranty given under this agreement is found to be untrue or misleading.
	2. The rights of the Council under clause 11.1 are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this agreement on the part of the Consultant as having brought the agreement to an end. Any delay by the Council in exercising its rights to terminate shall not constitute a waiver of these rights.
4. **Obligations on termination**

On the Termination Date the Consultant shall:

* + 1. immediately deliver to the Council all Confidential information, Council Property, Personal Data for which the Council is the Data Controller and other information or materials in its possession or under its control; and
		2. subject to the Council’s data retention guidelines, irretrievably delete any information relating to the Services stored on any magnetic or optical disk or memory and all matter derived from such sources which is in his possession or under his control outside the premises of the Council (except where required to meet obligations under Company Law, Tax law and Data Protection Legislation). This obligation includes requiring any sub contractor to delete such data where applicable; and
		3. certify that he has complied fully with his obligations under this clause 12 together with such evidence of compliance as the Council may reasonably request.
1. **Status**
	1. The relationship of the Consultant to the Council will be that of independent Consultant and nothing in this agreement shall render it or any Consultant Personnel an employee, worker, agent or partner of the Council and the Consultant shall not hold itself out as such.
	2. This agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant shall be fully responsible for and shall indemnify the Council for and in respect of:
		1. any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law. The Consultant shall further indemnify the Council against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Council in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Council's negligence or wilful default;
		2. any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought against the Council arising out of or in connection with the provision of the Services by the Consultant, except where such claim is as a result of any act or omission of the Council.
	3. The Council may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Consultant.
2. **Notices**
	1. Any notice given under this agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or by sending it by pre-paid recorded delivery or registered post or by email to the relevant party at its registered office for the time being notified by the relevant party to the other party. Any such notice shall be deemed to have been received:
		1. if delivered personally, at the time of delivery; and
		2. in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting,
		3. if sent by email at the time of the receipt of the transmission], provided that, any email sent after 1700 hrs on a Working Day shall be deemed to be received at 0900hrs on the following Working Day
	2. In proving such postal service it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post.
	3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
3. **Entire agreement**

Each party on behalf of itself acknowledges and agrees with the other party that:

* + 1. this agreement together with any documents referred to in it constitutes the entire agreement and understanding between the Consultant and the Council and supersedes any previous arrangement, understanding or agreement between them relating to the Engagement (which shall be deemed to have been terminated by mutual consent);
		2. in entering into this agreement neither party has relied on any Pre-Contractual Statement; and
		3. each party agrees that the only rights and remedies available to it or arising out of or in connection with any Pre-Contractual Statement shall be for breach of contract. Nothing in this agreement shall, however, limit or exclude any liability for fraud.
1. **Variation**

No variation of this agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

1. **Counterparts**

This agreement may be executed in any number of counterparts, each of which, when executed shall be an original, and all the counterparts together shall constitute one and the same instrument.

1. **Third party rights**
	1. A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
2. **Governing law and jurisdiction**
	1. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
	2. The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).
3. **Dispute resolution**
	1. If any dispute arises in connection with this agreement the authorised representatives of the Council and the Consultant shall, within 10 Working Days (or such other time as the parties may agree in writing) of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
	2. If the dispute is not resolved at that meeting, the parties will attempt to settle it by referring the matter to the relevant senior officers of the Council and the Consultant who will meet in a good faith effort to resolve the matter within 20 Working Days of referral.
	3. If the dispute is not resolved by the parties referred to in clause 20.2, the parties will attempt to settle it by referring the matter to the parties respective directors (or equivalent) who will meet in a good faith effort to resolve the matter within 20 Working Days of referral.
	4. If the matter is not resolved through negotiation either Party may refer the matter to mediation.
4. **Limitation of liability**
	1. Subject to clause 21.4, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with this agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
	2. Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement. Subject to clause 21.4, the Council's total aggregate liability in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement (other than a failure to pay the Fees that are properly due and payable and for which the Council shall remain fully liable), shall in no event exceed the Fees paid or payable under or pursuant to this agreement.
	3. Subject to clause 21.4, the Consultant’s total liability in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement shall in no event exceed the sum of £5 million in relation to any one claim or series of connected claims;
	4. Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
5. fraud or fraudulent misrepresentation;
6. death or personal injury caused by its negligence;
7. breach of any obligation as to title implied by statute; or
8. any other act or omission, liability for which may not be limited under any Applicable Law.
9. **Prevention of bribery**
	1. The Council may terminate this agreement by written notice with immediate effect, and recover from the Consultant all losses resulting from such termination, if the Consultant, or any of its employees, agents or sub-contractors (in all cases whether or not acting with the Consultant’s knowledge):

(a) directly or indirectly offers, promises or gives any person working for or engaged by the Council a financial or other advantage to;

(b) induces that person to perform improperly a relevant function or activity;

(c) rewards that person for improper performance of a relevant function or activity;

(d) directly or indirectly requests, agrees to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;

(e) commits any offence:

(i) under Section 117(2) of the Local Government Act 1972;

(ii) under the Bribery Act 2010;

(iii) under legislation creating offences concerning fraudulent acts; or

(iv) at common law concerning fraudulent acts relating to this agreement or any other contract with the Council.

(f) defrauds, attempts to defraud, or conspires to defraud the Council.

22.2 Any termination under clause 22.1 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

**23 Modern Slavery**

23.1 To the extent that the Modern Slavery Act 2015 may apply to the Consultant, the Consultant:

* + 1. represents and warrants that it is compliant with its obligations under the Modern Slavery Act 2015 and that neither the Consultant nor any of its officers, employees, agents. sub-contractors or other persons associated with it:
			1. have been convicted of any offence involving slavery and human trafficking anywhere in the world;
			2. have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body anywhere in the world regarding any offence or alleged offence of or in connection with slavery and human trafficking.
		2. shall implement and maintain throughout the term of this agreement with the Council due diligence procedures for its own suppliers, sub–contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
		3. shall report to the Council any breach or alleged breach of the Consultant’s anti-slavery and human trafficking policies and procedures or those of its suppliers, sub–contractors and other participants in its supply chain and shall provide reasonable assistance to the Council to allow the Council to carry out any audit of the Consultant’s anti-slavery and human trafficking policies and procedures or those of any suppliers, sub–contractors and other participants in its supply chains.
1. **EQUAL OPPORTUNITIES**

24.1 The Consultant shall not unlawfully harass or victimise a person or discriminate either directly or indirectly because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, colour, nationality, ethnic or national origin, religion, or belief, sex, or sexual orientation (the **Protected Characteristics**) and without prejudice to the generality of the foregoing the Consultant shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.

24.2 The Consultant shall give due regard to the need to eliminate discrimination, advance equality and foster good relations within the meaning and scope of the Public Sector Equality Duty in Section 149 of the Equality Act 2010 in the execution of the agreement.

24.3 The Consultant shall take all reasonable steps to secure the observance of Clauses 24.1 and 24.2 by all servants, employees or agents of the Consultant and all suppliers and sub-contractors employed in the execution of the agreement.

24.4 The Consultant shall demonstrate to the Council that it has a policy to comply with its statutory obligations under the legislation referred to above in Clauses 24.1 and 24.2.

24.5 If there should be any findings of unlawful discrimination made against the Consultant by any court or employment tribunal, or an adverse finding in a formal investigation by the Equality and Human Rights Commission, the Consultant shall take appropriate steps to prevent repetition of the unlawful discrimination.

24.6 The Council reserves the right to test the Consultant's equality performance through the life of the agreement. The Consultant shall cooperate with the Council regarding the provision of any data and/or access for site visits as reasonably required by the Council.

**25. WARRANTIES**

25.1 The Consultant represents and warrants that:

It has full capacity and authority to enter into and to perform its obligations under this agreement;

there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might adversely affect its ability to perform its obligations under this agreement;

it has not done, and in performing its obligations under this agreement, it shall not do, any act or thing that contravenes the Bribery Act 2010 or any other applicable anti-bribery or anti-money laundering laws and/or regulations and it has maintained and monitored, and will maintain and monitor, policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance with the Bribery Act 2010 and related applicable Laws; and

its obligations under this agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).

The Consultant represents and warrants that as at the Commencement Date:

it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

it has obtained all Necessary Consents;

all information contained in the Consultant's Tender or Quotation remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to the Commencement Date and separately warrants to inform the Council in the event there are any changes to such information during the Term of this agreement; and

shall promptly notify the Council in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services.

25.3 Each of the representations and warranties set out in Clauses 25.1 to 25.2 (inclusive) shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this agreement. Save as expressly set out in this agreement, all warranties, representations, conditions and other terms implied by Law (whether statutory or otherwise), are hereby excluded to the fullest extent permitted by Law.

1. **Force majeure**
	1. **Force Majeure Event** means any circumstance not within a party’s reasonable control including, without limitation:
		1. acts of God, flood, drought, earthquake or other natural disaster;
		2. epidemic or pandemic;
		3. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
		4. nuclear, chemical or biological contamination or sonic boom;
		5. any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
		6. collapse of buildings, fire, explosion or accident;
		7. any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); or
		8. interruption or failure of utility service.

* 1. Provided it has complied with Clause 26.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
	2. The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
	3. The Affected Party shall:

26.4.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 7 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and

26.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

26.5 If the Force Majeure Event prevents, hinders, or delays the Affected Party’s performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 2 weeks’ written notice to the Affected Party.

**27 LIQUIDATED DAMAGES**

27.1 If the Consultant fails to deliver the Services by the date agreed, or (where an extension of time has been agreed by the Parties) the revised date for delivery (as the context requires, the"**Agreed Delivery Date**"):**-**

* + 1. the Consultant shall pay the Council a sum by way of liquidated damages for each day between the Agreed Delivery Date and thedate on which the Services are delivered equal to [VALUE TO BE DETERMINED] or [% of the Fees for the relevant Services], up to amaximumamount of [VALUE TO BE DETERMINED] or [% of the Fees for the relevant Services] ("**Liquidated Damages**"). Subject to Clause 27.3, during the period in which liquidated damages are payable under this Clause 27.1 ("**Liquidated Damages Period**") the liquidated damages payable in accordance with this Clause shall be the Council’s only remedy for any loss or damage suffered or incurred by the Council in relation to the failure by the Consultant to deliver the Services by the Agreed Delivery Date; and
		2. if the sums payable by the Consultant pursuant to Clause 27.1 do not meet the actual losses or damages incurred by the Council resulting from the failure of the Consultant, the Council shall be entitled to:
			1. claim any remedy available to it (whether under the Agreement or otherwise) for loss or damage incurred or suffered over and above the Liquidated Damages; and
			2. without prejudice to Clause 27.1 the Council shall be entitled to terminate the Agreement with immediate effect by giving notice in writing to the Consultant.
	1. The Consultant shall not be obliged to pay any sums pursuant to Clause 27.1 if and to the extent the failure by the Consultant to deliver the Services by the Agreed Delivery Date directly results from the Council Default provided that the Consultant notifies the Council immediately of such circumstances in sufficient detail to enable the Council to remedy the situation. Except as set out in this Clause 27.2, no payment or concession to the Consultant by the Council or other act or omission of the Council shall in any way affect its rights to liquidated damages pursuant to Clause 27.1 or be deemed to be a waiver of the right of the Council to recover any damages unless such waiver has been expressly made in writing by the Council.
	2. Notwithstanding Clause 27.1 the Consultant does not exclude responsibility for performing or re-performing the obligation or duty which gave rise to the relevant claim at its own cost in such manner as would (if possible) result in the same or substantively similar effect for the Council, whether or not such performance or re-performance gives rise to additional costs for the Consultant and the cost of re-performance shall be borne solely by the Consultant and shall not be re-charged to the Council whether by way of costs, reimbursement or otherwise.
	3. Having given careful consideration to this matter, all monies payable by the Consultant under Clause 27.1 are considered by the Parties:
		1. to be a genuine pre-estimate of the losses which the Council will incur in relation to the Consultant's failure to deliver the Services by the Agreed Delivery Date, it being impossible to quantify the actual aggregate losses sustainable by the Council in terms of both loss of revenue as well as loss of reputation and prestige (the Parties acknowledging that hypothetically the losses sufferable by the Council might be more or less than the agreed liquidated damages calculation);
		2. to be arrived at without any inequality of bargaining position as between the Parties as a true bargain between the Parties;
		3. to be fair, given the nature and circumstances of the Agreement;
		4. to be neither excessive, extravagant, unconscionable or oppressive in all the circumstances;
		5. and as such these monies are payable as liquidated damages such that the Consultant waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause 27.
		6. The Parties' joint intention in agreeing a scheme of liquidated damages in such circumstances is to substantially reduce and, to the fullest extent possible in law, eliminate, the risk of a dispute and potential litigation in relation to such circumstances.
	4. Each Party confirms that:-

 27.5.1 it has taken specific legal advice on the effect of this clause; and

 27.5.2 based on such advice, it does not enter into the Agreement in anticipation that, or with any expectation that this Clause will be unenforceable for any reason.

**28. SOCIAL VALUE**

 28.1 The Consultant acknowledges that, under the Public Services (Social Value) Act 2012, the Council is required to consider how goods, services and works, that it procures, improve the economic, social and environmental well-being of the Mendip District, and furthermore, that as a matter of procurement policy and practice, the Council requires any supplier, provider, consultant or contractor providing goods, services and works to the Council to use all reasonable endeavours to assist the Council to improve the economic, social and environmental well-being of the Mendip District.

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

|  |  |
| --- | --- |
| Signed by [NAME ]for and on behalf of **MENDIP DISTRICT COUNCIL** | ...................................Authorised Officer  |

|  |  |
| --- | --- |
| Signed by [NAME ]for and on behalf of **MENDIP DISTRICT COUNCIL** | ...................................Authorised Officer  |
| Signed by [NAME OF DIRECTOR]for and on behalf of [NAME OF CONSULTANT]Signed by [NAME OF DIRECTOR/ COMPANY SECRETARY]for and on behalf of [NAME OF CONSULTANT]**OR**Executed by [*Name of Company*] acting by )[*Name of Director*], a director, in the presence of: ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Director)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of Witness\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of Witness\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Occupation of Witness\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Address of Witness\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | ...................................Director...................................Director/ Company Secretary |

**Schedule 1 – Services, Consultants Tender or Quotation, Fees and Insurance**

**Part A** [ Insert the Service Specification ]

**Part B** [ Insert the Consultants Tender or Quotation]

**Part C** - **Fees and Payment**

The Fees for the Services shall be as follows:

[ Insert Fees ]

Payment terms are 30 days from receipt of an undisputed invoice, or 30 days from when any queries that may be raised on the invoice have been resolved, whichever is the later.

**Part D - Insurances Required**

Public Liability – minimum indemnity sum in respect of each and every event £[ 5 million ]

Employers Liability - minimum indemnity sum in respect of each and every event £[ 5 million ]

Professional Indemnity - minimum indemnity sum in respect of each and every event £[ 2 million ]

**Schedule 2 – Data Processing**

**Processing, Personal Data and Data Subjects**

This Schedule shall be completed by the Council, who may take account of the views of the Consultant, however the final decision as to the content of this Schedule shall be with the Council at its absolute discretion.

1. The contact details of the Council’s Data Protection Officer are:

[ ]

2. The contact details of the Consultant’s Data Protection Officer are:

 [ ]

3. The Consultant shall comply with any further written instructions with respect to processing by the Council.

4. Any such further instructions shall be incorporated into this Schedule.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject matter of theprocessing | The subject matter of the Personal Data being processed will include Personal Data relating to Data Subjects who are employees of, or service users of the Council or in respect of any matter on which the Services are being sought by the Council or which is otherwise relevant to the provision of the Services. |
| Duration of theprocessing | The processing of Personal Data by the Consultant will be carried out for the period during which the Services are required and any period during which the Consultant is required to maintain records in accordance with this agreement and any regulatory and legal requirements. |
| Nature and purposes ofthe processing | The processing of Personal Data will include the transmission of Personal Data relating to Data Subjects required in order for the Consultant to effectively provide the Services. It may involve being processed on systems of the Consultant for the purposes of delivering the Services.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. |
| Type of Personal Data | Personal Data may include Special Categories of Personal Data dependent on the Services being provided and the nature of the Personal Data required to be processed in order for the Services to be provided, including but not limited to, name, address, date of birth, and telephone number, email address, health and biometric data, etc, of Council employees or its service users. |
| Categories of DataSubject | The categories of Data Subjects in respect of whose Personal Data will be processed will depend on the nature of the Services. |
| Plan for return anddestruction of the data once the processing is complete UNLESS there is a requirement under UK Law to preserve that type of data | Any Personal Data of Data Subjects shall be retained by the Consultant only for as long as is necessary for the performance of the Services and/or in compliance with the management information retention provisions set out in this agreement. |

5. Further details or instructions about the processing of Personal Data may be further specified by the Council in writing, which may include additional instructions in relation to the processing of Personal Data and may require, amongst other things that the Parties enter into an Information Sharing Agreement in relation to the processing of Personal Data for the purposes of the Services.

6. Clause 8 (Data Protection and Freedom of Information) and this Schedule 2 set out the provisions for the sharing of Personal Data when the Council discloses Personal Data to the Consultant in order for the Consultant to supply services to the Council or its service users.

7. To the extent that the Consultant receives requests for services directly from service users the Consultant shall be a Controller of any Personal Data, and it shall comply with its obligations pursuant to Data Protection Legislation.

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# APPENDIX B – Pricing Schedule

**Not used**

# APPENDIX C – Form of Quote

To: Mendip District Council

Cannards Grave Road

Shepton Mallet

Somerset

BA4 5BT

Having examined the specifications for the supply of Works/Services/Goods detailed in this RFQ, we offer to supply the said Works/Services/Goods in conformity therewith for the sums as may be ascertained in accordance with the RFQ documents.

I/We ...............................................................................................................................

**(Insert the full name of the Bidder including 'Ltd.' 'PLC' or as the case may be.**

**N.B. if the legal name is a business name not followed by 'Ltd.' or 'PLC' or a similar expression, please state the legal nature of the bidder e.g. partnership or incorporated unlimited company.)**

Of .................................................................................................................................

…………………………………………………………… **(Insert address)**

or being a company registered in England/Scotland (delete as applicable)

.......................................................... **(Insert other country of incorporation)**

whose registered number is ……………………... **(Insert company registration number)**

and whose registered office is at **(Insert registered address of company)**

...................................................................................

...................................................................................

I/We acknowledge that unless, and until, this RFQ is incorporated in a Form of Contract prepared by the Council's Solicitor and executed by the Council, there shall not be a binding contract between me/us and the Council.

We understand that you are not bound to accept the lowest or any Quote you may receive, and that more than one Quote may be accepted or part of one Quote may be accepted, all at the discretion of the council.

Dated: ......................................

Signed: ......................................

Full name of signatory: .......................................

Capacity of signatory: ........................................

On behalf of: (full name of Bidder) ........................................