

DATED

CONSULTANCY AGREEMENT

between

North Northamptonshire Council and

[CONSULTANT'S NAME]

THIS AGREEMENT is made]

BETWEEN

(1) North Northamptonshire Council of of Sheerness House, 41 Meadow Road, Kettering NN16 8TL (the "Council"); and

(2) [XXX] (Company Registration No [XXX]) whose offices are at [XXX] (the "Consultant").

BACKGROUND:

- (A) The Council has advertised for providers of the Services (as defined in Clause 1.1 (Definitions) below) and following a request for quotation process and the Supplier's Tender Response at Schedule 2, has selected the Supplier to provide the Services to the
- (B) In reliance upon the skill, knowledge and experience the Consultant has represented that it has, the Council wishes to appoint the Consultant to provide the Services.
- (C) The Consultant agrees to accept the appointment in accordance with the terms and conditions of this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the context otherwise requires the definitions set out below shall apply.

"Agreement" this professional services agreement, its terms and conditions, the schedule and any other document attached;

"Best Industry Practice" standards, practices, methods and procedures conforming to the Laws and with all due care, skill, diligence and ability which would be expected from a skilled and appropriately experienced, qualified and trained person or body engaged in a similar type of undertaking under the same or similar circumstances;

"Bribery Act" the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

"Commencement Date" xxxxx;

"Commercially Sensitive" the information listed in Schedule 4 comprising the information of a

Information"		commercially sensitive nature relating to the Consultant, its intellectual property rights or its business or which the Consultant has indicated to the Council that, if disclosed by the Council, would cause the Consultant significant commercial disadvantage or material financial loss;
"Data Controller"		as defined in the Data Protection Legislation;
Data Protection Legislation"		all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;
"Data Subject"		as defined in the Data Protection Legislation;
"Confidential Information"		all confidential information (however recorded or preserved) disclosed by a party or its representatives to the other party and that party's representatives in connection with this Agreement, including but not limited to: <ul style="list-style-type: none"> a. any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party; b. any information developed by the parties in the course of carrying out this Agreement; c. Personal Data; d. any Commercially Sensitive Information.
"Consultant's Representative"		the representative appointed by the Consultant in relation to this Agreement, whose details are set out in the Schedule 2, or such other person as the Consultant may otherwise advise in writing;
"Council's Authorised Officer "	Authorised	the officer responsible for the monitoring and management of this Agreement, or such other person as the Council may otherwise advise in writing;
"Expiry Date"		12 months after commencement date
"Fees"		the fees payable to the Consultant by the Council under the Agreement for the full and proper performance by the Consultant of its obligations under this Agreement, as set out in the Schedule 3;
"Force Majeure Event"		any cause materially affecting the performance of the Services under the Agreement arising from any act, events, omissions, happenings or non-happenings beyond the parties reasonable control including, without limitation, acts of God, war, riot, fire, flood or any disaster affecting either of the parties but will not mean any labour dispute between the Consultant and the Consultant's employees, agents or sub-contractors;
"Laws"		any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body which the Consultant is bound to comply with;

"Personal Data"	as defined in the Data Protection Legislation;
"Data Processor"	as defined in the Data Protection Legislation;
"Prohibited Act"	<p>(a) offering, promising or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward:</p> <ul style="list-style-type: none"> (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the Council; or (ii) for showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Council; <p>(b) committing any offence:</p> <ul style="list-style-type: none"> (i) under the Bribery Act and or the Data Protection legislation; or (ii) under legislation creating offences in respect of fraudulent acts; or (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other agreement with the Council; or (iv) defrauding or attempting to defraud or conspiring to defraud the Council; (v) any action that may reasonably be considered to be to the detriment of the Council and or its end user's welfare, either by positive action or by omission. Such action shall include but is not limited to; breach of the law, related to health, safety and or care, safeguarding, abuse, sexual allegations and or misconduct; financial malpractice or business continuity failure;
"Safety Legislation"	the Health and Safety at Work Act 1974 and the Consumer Protection Act 1987 together with all regulations made under them including, but not limited to, the General Product Safety Regulations 1994, the Control of Substances Hazardous to Health Regulations 1999 and all other legislation, codes of practice and guidance from time to time amended (including subordinate legislation and European Community legislation to the effect that it has direct effect on member states) imposing legal requirements with respect to health and safety at work and/or the safety of any goods and equipment used in the performance of the Services and the health and safety of the users of such equipment;
"Schedule"	the schedules attached to this Agreement;
"Services"	the services to be provided to the Council by the Consultant and its Staff, as specified in the Schedule 1;
"Staff"	all persons employed by the Consultant to perform its obligations under the Agreement together with the Consultant's servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Agreement;
"Tender Response"	the tender response and other associated documents prepared by the Consultant as detailed in Schedule 2;
"Working Day"	Monday to Friday, excluding public holidays in England and Wales.

1.2 The interpretation and construction of the Agreement shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) references to any party shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) the words "include", "included", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
- (g) headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.
- (h) in cases of conflict the following order of precedence shall apply:
 - 1. the terms and conditions of this Agreement;
 - 2. the Services detailed in Schedule 1;
 - 3. the Tender Response detailed in Schedule 2;
 - 4. Schedule 3 and then 4.

2. COMMENCEMENT AND DURATION

2.1 This Agreement is for a period commencing on the Commencement Date and terminating on the Expiry Date (the "Term"), subject always to review or such lesser period as a result of the Agreement being terminated earlier in accordance with the provisions of this Agreement.

2.2 The Consultant confirms that:

2.2.1 it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Agreement; and

2.2.2 it has entered into this Agreement in reliance on its own due diligence.

3. THE SERVICE STANDARD

3.1 In performing the Services, the Consultant shall:

3.1.1 comply with the terms of this Agreement and completes the Services in accordance with the requirements set out in the Schedule 1 in all material respects ensuring that, except with the consent of the Council;

3.1.2 the Services are carried out exclusively by the persons named in Schedule 2

3.1.3 operate and deliver the Services in accordance with Best Industry Practice and in compliance and conformance with all applicable Laws;

- 3.1.4 notify the Council in writing immediately on learning of any relationship or potential conflict of interest that might influence or be perceived to influence the provision of the Services;
- 3.1.5 co-operate with the Council in all matters relating to the Services;
- 3.1.6 co-operate, and procure that its Staff co-operates, with the Council in carrying out any performance monitoring, at no additional charge to the Council; and
- 3.1.7 use its best endeavours to promote the interests of the Council.
- 3.2 The Consultant shall meet all the performance requirements and Service Levels set out in the Specification.
- 3.2.1 The Consultant shall give the Council updates of the nature and status of its efforts to correct or, where, relevant, mitigate any Service Level failure and provide monthly reports as set out in Clause 8.4 of the Specification as to achievement of Service Levels and Service Credits to which the Council has become entitled.
- 3.3 Compensation for Service Level Failure
- 3.3.1 If the Consultant fails to meet the Service Levels set out at Clause 9 of the Specification, the Council shall become entitled to the Compensation specified in the table set out below corresponding to the relevant fault on submitting a written claim for such Service Credit.

Failure	Compensation
Failure to respond to all Occupational Therapist recommendations within a timely manner and at the very least within two (2) weeks of receipt.	<i>30 % of the hourly Fees set out in Schedule 3 shall be forfeited by the Client (the Forfeited Fee) . The Council shall deduct the Forfeited Fee prior to making any payment to the Consultant. For the avoidance of doubt payments to the Consultant shall be net of any Forfeited Fee.</i>
Failure to carry out the survey on site within four (4) to six (6) weeks of receipt of the Occupational Therapist recommendation.	
Failure to work with other colleagues in the team to ensure that all Disabled Facilities Grants are approved within six (6) months on receipt of a completed application, which includes the production of all drawings and schedules.	

- 3.3.2 For the avoidance of doubt, deduction of Compensation amount from payments due to the Consultant shall not be an exclusive remedy for a particular Service Level failure.

4. FEES AND PAYMENT

- 4.1 The Consultant they shall be responsible for any costs, expenses and insurances associated with any travel required under for the provision of the Services.
- 4.2 In consideration of the performance of the Consultant's obligation under the Agreement, and subject to (a) receipt of all drawings and schedules of work as set out in clause 5.1.8; and 9.1.3 (b) of the Specification and which are to the satisfaction of the Council, the Council shall pay the Fees set out in the Schedule 3 within thirty (30) days of a correctly rendered invoice. No extra charges shall be effective unless agreed in writing and signed by the Council.
- 4.3 All invoices shall be directed to the Council's Authorised Officer.
- 4.4 The Council shall pay all undisputed invoices submitted to it by the Consultant in accordance with the payment arrangements set out in Schedule 3, to a bank account nominated in writing by the Consultant. Each invoice shall include such supporting information required by the Council to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 4.5 The Council shall reduce payment to account for any Forfeited Fee deductible in accordance with clause 3.3.1 and may reduce payment in respect of any Services which the Consultant has either failed to provide or has, in the Council's reasonable opinion, provided inadequate Services;
- 4.6 All amounts payable by the Council under the Agreement are exclusive of amounts in respect of valued added tax chargeable from time to time (the "VAT"). Where any taxable supply for VAT purposes is made under the Agreement by the Consultant to the Council, the Council shall, on receipt of a valid VAT invoice from the Consultant, pay to the Consultant such additional amounts in respect of VAT as are chargeable on the performance of the Services at the same time as payment is due for the performance of the Services.
- 4.7 If the Council fails to pay any amount properly due and payable by it under the Agreement, the Consultant shall have the right to charge interest on the overdue amount at the rate of two (2) per cent per annum above the base rate for the time being of the Bank of England, accruing on a daily basis from the due date up to the date of actual payment. This clause shall not apply to payments that the Council disputes in good faith.
- 4.8 The Consultant shall maintain complete and accurate records of the time spent and materials used by the Consultant in the performance of the Services, and the Consultant shall allow the Council to inspect such records at all reasonable times on request.
- 4.9 Payment by the Council shall be without prejudice to any claims or rights which the Council may have against the Consultant and shall not constitute any admission by the Council as to the performance by the Consultant of its obligation hereunder.
- 4.10 The Council may at any time, without notice to the Consultant, set off any liability of the Consultant to the Council against any liability of the Council to the Consultant, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. Any exercise by the Council of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.
- 4.11 Where the Consultant enters into a Sub-Contract, the Consultant shall include in that Sub-Contract:
- 4.11.1 provisions having the same effect as clauses 4.3 - 4.4 of this Agreement; and
- 4.11.2 a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 4.3 - 4.4 of this Agreement;

- 4.11.3 in clause 4.10, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

5. STATUTORY RIGHTS

- 5.1 Nothing in these conditions shall affect in any way the statutory rights of the Council or any subsequent amending or consolidating legislation.
- 5.2 A party who is not a party to this Agreement is not entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 except where this Agreement expressly provides otherwise.
- 5.3 The Consultant shall at its own expense, comply in all respects with the Laws and all applicable rules and regulations and Best Industry Practice in all matters arising in the performance of or in connection with the Agreement.

6. MONITORING

- 6.1 The Consultant's performance of the Services shall be monitored by the Council's Authorised Officer, who shall be entitled to make recommendations to the Consultant for improving the standard of the Consultant's performance in undertaking the Services.
- 6.2 The Consultant's Representative will meet regularly with the Council's Authorised Officer (the "Liaison Meetings") upon receiving a request to do so, to discuss the Services being provided by the Consultant and to provide the Council with progress reports.
- 6.3 At Liaison Meetings the Council's Authorised Officer and the Consultant's Representative will review, among other things, the Consultant's performance, key performance indicators (the "KPIs") where applicable, progress-to-date on provision of the Services, and any issues relating to the performance of the Services.
- 6.4 The Council's Authorised Officer shall keep minutes of all Liaison Meetings.

7. ANTI-BRIBERY AND MODERN SLAVERY ACT REQUIRMENT

- 7.1 The Consultant shall:
- 7.1.1 comply with all applicable anti-bribery, anti-corruption and anti-slavery legislation including, without limitation, the Bribery Act and Modern Slavery Act 2015;
- 7.1.2 maintain and enforce its own policies and procedures, including adequate procedures under the Bribery Act, to ensure compliance with all applicable anti-bribery and anti-corruption legislation;
- 7.1.3 use reasonable endeavours to ensure that all persons associated with the Consultant (as defined by section 8 of the Bribery Act) including any sub-contractors and suppliers comply with this clause;
- 7.1.4 implement due diligence procedures for its own suppliers, sub-contractors and other participants in its supply chain, to ensure that there is no slavery or human trafficking in its supply chain;
- 7.1.5 use reasonable endeavours not to purchase any raw materials, resources or products from any country that has been sourced from producers or manufacturers using forced labour in its operations or practice.

8. EQUALITIES

- 8.1 The Consultant shall (and shall procure that its Staff shall) not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination in employment including but not limited to the Equality Act 2010, and shall (and shall procure that its Staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Services.

9. SAFEGUARDING

- 9.1 The Consultant acknowledges that in performing the Agreement it may have access to vulnerable adults and or children, their personal data and confidential information relating to them or members of the public and accordingly the Consultant shall ensure that no member of Staff or person is permitted to carry out work in connection with this Agreement where the Security Check (the "Security Check" means security cleared to the standard required for Staff via the Disclosure and Barring Service) reveals any conviction, caution, pending prosecution, binding over order or other criminal record or any soft information that would give a prudent and responsible Council cause for concern in the context of this Agreement. For the avoidance of doubt, and without prejudice to the generality of the foregoing, the Consultant shall ensure that no person who appears on any statutory barred list shall carry out any work in connection with this Agreement.

10. PROTECTION OF DATA

- 10.1 Both parties will comply with all applicable requirements of the Data Protection Legislation and any applicable Laws. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 10.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Data Controller and the Consultant is the Data Processor.
- 10.3 Without prejudice to the generality of clause 10.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Consultant for the duration and purposes of this Agreement.
- 10.4 Without prejudice to the generality of clause 10.1, the Consultant shall, in relation to any Personal Data processed in connection with the performance by the Consultant of its obligations under this Agreement:
- (a) process that Personal Data only on the written instructions of the Council (as set out in Schedule 6), unless the Consultant is required by applicable Laws to otherwise process that Personal Data. Where the Consultant is so required, it shall promptly notify the Council before processing the Personal Data, unless prohibited by the applicable Laws;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);
 - (c) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Consultant has provided appropriate safeguards in relation to the transfer;

- (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) 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; and
 - (iv) the Consultant complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
 - (d) notify the Council immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
 - (e) assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify the Council immediately and in any event within 24 hours on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Agreement;
 - (g) at the written direction of the Council, delete or return Personal Data and copies thereof to the individual on termination or expiry of the Agreement unless required by the applicable Laws to store the Personal Data;
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and allow for audits by the Council or the Council's designated auditor.
- 10.5 The Consultant shall indemnify the Council against any losses, damages, cost or expenses incurred by the Council arising from, or in connection with, any breach of the Consultant's obligations under this clause 10.
- 10.6 Where the Consultant intends to engage a Sub-Contractor pursuant to clause 4.10 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:
- (a) notify the Council in writing of the intended processing by the Sub-Contractor;
 - (b) obtain prior written consent to the processing;
 - (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 10.
- 10.7 Either party may, at any time on not less than thirty (30) Working Days' written notice to the other party, revise this clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.
- 10.8 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

11. FREEDOM OF INFORMATION

- 11.1 The Consultant recognises that the Council has information disclosure obligations under the Freedom of Information Act 2010 ("FOIA") and the Environmental Information Regulations ("EIR"). The Consultant agrees to provide such assistance and support as may be requested from time to time by the Council for the purposes of enabling or assisting the Council to comply with these information disclosure obligations in respect of matters relating to or arising out of this Agreement.
- 11.2 In the event that a request made to the Council for access to information under the FOI or the EIR, or any notice, recommendation or complaint is made to or against the Council in relation to its obligations under the FOIA or EIR, the Consultant will within five (5) Working Days of the date of a request from the Council provide to the Council, any details in its possession relating to this Agreement or to the Consultant as the Council may require to deal with such access request or deal with such notice, recommendation or complaint.
- 11.3 The Consultant acknowledges the Council may be obliged under the FOIA or EIR to disclose information to third parties, including information relating to the appointment of the Consultant to provide the Services under this Agreement, and the terms of this Agreement, subject to certain exemptions. The Consultant further acknowledges and accepts that the decision to disclose information and the application of any such exemptions under the FOIA or EIR will be at the Council's sole discretion PROVIDED THAT the Council shall act reasonably and proportionately in determining whether any exemptions under the FOIA or EIR may apply to protect the Consultant's legitimate commercial interests trade secrets.

12. TRANSPARENCY

- 12.1 The Consultant acknowledges that Council has information publication obligations the Local Government Transparency Code 2014, and agrees that this Agreement (including the Schedules), and any documentation including but not limited to requests for quotes, advertisement issued by the Council seeking expressions of interest, the pre-qualification questionnaire and the tender documents (the "Procurement Documents") issued by the Council in relation to this Agreement are not Confidential Information, and may be published by the Council, save where in the reasonable opinion of the Council the contents of the Agreement or the Procurement Documents are exempt from disclosure under the FOIA or EIR in which case, the Consultant consents to the Agreement or Procurement Documents being redacted by the Council to the extent necessary to remove or obscure the exempt content, and to publication subject to those redactions.

13. CONFIDENTIALITY AND COUNCIL'S PROPERTY

- 13.1 Subject to clause 10 (Protection of Data), clause 11 (Freedom of Information) and Clause 12 (Transparency), the Consultant shall not, without the prior written consent of the Council,, publish or disclose to any person, or permit any such disclosure by any of its employees or representatives, any Confidential Information received by it in relation to the Services or to the Council's business generally.
- 13.2 The restriction in clause 13.1 does not apply to:
- 13.2.1 any information required to be disclosed by an order of court or other tribunal or required to be disclosed in accordance with any law, statute, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court, delegated or subordinate legislation; or
- 13.2.2 any information which is already in, or comes into, the public domain otherwise than through unauthorised disclosure by the Consultant; or
- 13.2.3 any disclosure authorised by the Council.
- 13.3 All designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection

with the Services and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Services (the "Material"), and any data or documents (including copies) produced, maintained or whether or not stored on the Council's computer systems or other electronic equipment (including mobile phones, if provided by the Council) in relation to this Agreement, remain the property of the Council.

- 13.4 All existing and future intellectual property rights and proprietary rights including copyright and all other rights of a like nature conferred under the laws of the United Kingdom (and all other countries of the World) in all works conceived originated or made by the Consultant pursuant to the Services ("Intellectual Property") shall rest with the Consultant.
- 13.5 The Consultant shall hereby grant the Council exclusive and irrevocable licence to use the Intellectual Property for all purposes connected with this Agreement, including any documents or other works prepared by the Consultant its Staff and any substitutes and subcontractors.
- 13.6 The Consultant warrants and represents that the Intellectual Property will not infringe any intellectual property rights of which a third party is the proprietor. The Consultant agrees to indemnify the Council against any and all liability, loss, damages, costs and expenses which the Council or a third party may incur or suffer as a result of any dispute or contractual, tortious or other claims or proceedings brought against the Council by a third party alleging infringement of its intellectual property rights by reason of the use or exploitation of the Intellectual Property.
- 13.7 The Council may at any time (whether before or after completion of the Services, or after termination) request a copy or copies of (some or all of) the Material from you, at no additional cost to the Council and you shall provide the copy (or copies) to the Council within a reasonable period of time and in both re-writable and pdf format).

14. INDEMNITY

- 14.1 Without prejudice to any other provision of this Agreement, the Consultant will fully indemnify the Council against any claims made against it as a result of any failure by the Consultant to comply with any statutory provision to be observed or performed in connection with the provision of the Services.
- 14.2 The Consultant's liability to indemnify the Council arising under clause 14.1 will be without prejudice to any other right or remedy of the Council arising under this Agreement.

15. INSURANCE

- 15.1 The Consultant will throughout the Term maintain with a reputable insurance company within the UK such policies of insurance as are necessary to cover any liability of the Consultant in respect of loss of or damage to property and personal injury to, or death of, any person arising out of or in the course of or caused by the Consultant carrying out or failing to carry out its obligations under the Agreement or for which it may become liable to the Council under clause 14, including:
 - (i) public liability insurance cover in the minimum sum of £1,000,000.00 in respect of any one incident and the number of incidents covered shall be unlimited and should be adequate to cover all risks in the performance of the Services;
 - (ii) Employers liability insurance in the minimum sum of £5,000,000.00 in respect of one incident and the number of incidents covered shall be unlimited;
 - (iii) professional indemnity insurance against the risk of professional negligence on the part of the Consultant or its Staff in the minimum sum of £250,000.00 in respect of each and every claim or series of claims arising from any one event.
- 15.2 The Consultant shall continue to maintain the above policies of insurance for a 12-year period following the termination of the Agreement subject to such insurance being available at commercially reasonable rates.

15.3 Upon request, the Consultant will provide the Council with details of the policies of insurance (by way of insurer's certificate) effected in accordance with clause 15.1, so as to demonstrate that clause 15.1 is being complied with.

15.4 The Consultant will immediately inform the Council of any failure or inability to maintain insurance in accordance with clause 15.1 and of any circumstances likely to render such insurance void or voidable in order that the Consultant and the Council can discuss the means of best protecting their respective positions in the absence of such insurance.

16. TERMINATION OF AGREEMENT

16.1 Notwithstanding the provisions of **Error! Bookmark not defined.**3.3, the Council may terminate this Agreement 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:

- (i) Fails to meet any of the Performance Service Levels set out in clause 9 of the Specification on more than one occasion.
- (ii) commits any serious or repeated breach or non-observance of any of the provisions of this Agreement or refuses or neglects to comply with any reasonable and lawful directions of the Council;
- (iii) 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);

16.2 In the event of:

16.2.1 the passing by the Consultant of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Consultant or the dissolution of the Consultant; or

16.2.2 the making of an administration order in relation to the Consultant or the appointment of a receiver over, or the taking possession or sale by an encumbrancer of, any of the Consultant's assets; or

16.3.3 the Consultant making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally;

the Council may, without prejudice to any other power of termination or to any rights or remedies it may have, terminate the Agreement forthwith by notice and the Consultant shall indemnify the Council against all costs, expenses and damages for which the Council becomes liable arising from such termination.

16.2 Without prejudice to the Parties other rights and remedies, either party may forthwith terminate the Agreement by notice if the other:

16.2.1 commits or attempts a Prohibited Act;

16.2.2 fails to comply with Best Industry Practice, Safety Legislation and or the Laws;

16.2.3 commits any material breach of the terms of this Agreement and fails to remedy such breach within seven (7) days of being given written notice to do so by the other; or

16.2.4 fails to perform its obligations under the Agreement,

and the Consultant shall indemnify the Council against all costs, expenses and damages for which the Council becomes liable arising from such termination.

- 16.3 The Council may terminate this agreement if it reasonably believes that the circumstances set out in regulation 73(1) of the Public Contract Regulations 2015 apply.
- 16.4 Notwithstanding the generality of this clause 16 the Council shall have the right to terminate the Agreement, or to terminate the provision of any part of the Agreement at any time by giving one month's written notice to the Consultant.
- 17 ASSIGNMENT AND SUB-CONTRACTING
- 17.1 The Consultant shall not assign or sub-contract the Services under this Agreement, or any part thereof, without the permission of the Council in writing. Assignment or sub-contracting any part of the Services shall not relieve the Consultant of any obligation or duty attributable to the Consultant under this Agreement. The Consultant shall be responsible for the acts and omissions of its assignees and sub-contractors as though they were its own. Where the Council has consented to the placing of an assignment or sub-contracts, copies of each contract of assignment or sub-contract shall be provided by the Consultant to the Council within two (2) Working Days of issue.
18. DISPUTES
- 18.1 If the Council reasonably believes that the Services are deficient, the Consultant shall be formally notified in writing by the Council, inviting the Consultant at the earliest possible opportunity to discuss the matter and giving clear indications as to how the Services have not been satisfactory.
- 18.2 After such discussions, the Consultant shall remedy any agreed faults within an agreed, reasonable timescale. Once the Council has formally notified the Consultant of any such deficiencies, it shall be entitled to withhold payment of any invoices which the Consultant has submitted (or may submit) for the Services, or part pay any such invoices as it sees fit until such time as the agreed faults have been remedied.
- 18.3 If the Consultant is unable or unwilling to remedy the above faults, the Council may terminate this Agreement forthwith; if the Consultant feels that the Services are not deficient or that the Council has been unfair in its judgment of the quality of the Services, and the parties are unable to come to an agreement on the matter amicably between them, the matter may be resolved by reference to an independent mediator who is acceptable to both parties, and whose decision both parties agree shall be final. Both parties shall share the cost of mediation.
19. NOTICES
- 19.1 Any notice, request, demand, consent or approval given under or in connection with this Agreement must be given in writing. Any such notice, request, demand, consent or approval shall in the case of the Council be sent to the Council's Authorised Officer at the Council's address as set out at the beginning of this Agreement and in the case of the Consultant, to the Consultant's Representative at the Consultant's registered office address as set out at the beginning of this Agreement.
- 19.2 Notices may be delivered by hand or sent by post. If sent by post, a notice shall be deemed to have been received on the second Working Day following the date of posting. If sent by registered post or recorded delivery, it shall be deemed to have been received on the date and time receipt was acknowledged.
20. NO WAIVER
- No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement.
21. FORCE MAJEURE

Neither party shall be liable for delay in performing or failing to perform its obligations under this Agreement if the delay or failure results from Force Majeure. Such delay or failure shall not constitute a breach of this Agreement and the time for performance shall be extended by a period equivalent to that during which performance is prevented provided that if such delay or failure persists for more than one month nothing in this clause shall be taken to limit or prevent the exercise of the right to terminate under clause 16.

22. ACCRUED RIGHTS AND REMEDIES

The termination of the Agreement will not prejudice or affect any claim, right, action or remedy that will have accrued or will thereafter accrue to either party.

23. RIGHTS AND DUTIES RESERVED

All rights, duties and powers which the Council has as a local authority or which the Council's officers have as local authority officers are expressly reserved.

24. SURVIVAL OF TERMS

The terms of the Agreement will (except in respect of any obligations fully performed prior to or at the completion of the Services) continue in force and effect after the completion of the Services by the Consultant.

25. PUBLICITY AND BRANDING

The Consultant shall not:

- (a) make any press announcements or publicise this Agreement or its contents in any way; or
- (b) use the Council's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Council's Authorised Officer.

26. AUTHORITY TO ENTER INTO THE AGREEMENT

Each of the parties warrants its power to enter into this Agreement and that it has obtained the necessary approvals to do so.

27. ENTIRE AGREEMENT

27.1 This Agreement contains the whole agreement between the parties and neither party has relied upon any oral or written representations made to it by the other or the others employees, representatives or agents and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

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

28. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement.

29. NO PARTNERSHIP OR AGENCY

29.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to bind or make or enter into any commitments for or on behalf of any other party.

29.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

30. VARIATION

30.1 This Agreement may only be varied by a document signed by both parties.

31. EXTENSION

Subject to satisfactory performance by the Consultant, the Council may wish to extend this Agreement for a further period of up to 6 months. The Council may approach the Consultant if it wishes to do so before the end of the Expiry Date. The agreed terms and conditions in the Agreement will apply subject to any variation throughout any such extended period.

32. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS of which this Agreement has been entered into on the date stated at the beginning of it.

Signed on behalf of the COUNCIL by:

.....
Authorised Officer

Signed on behalf of the **CONSULTANT** by:

(1) Signature (Director)

Print

(2) Signature Director/Secretary

Print

SCHEDULE 1 - THE SERVICES

SCHEDULE 2 - TENDER RESPONSE

SCHEDULE 3 - FEES