

Appendix One: Terms and conditions of appointment

DATE 20[]

(1) WINCHESTER CITY COUNCIL

AND

(2) [insert name of Consultant]

CONTRACT FOR THE PROVISION OF CONSULTANCY SERVICES

Legal Services
City Offices,
Colebrook Street,
WINCHESTER,
Hants,
S023 9LJ

REF:

CONDITIONS OF CONTRACT

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SCHEDULES

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Part 1: Specification
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THIS CONTRACT IS DATED

PARTIES:

- (1) **WINCHESTER CITY COUNCIL** of City Offices Colebrook Street Winchester SO23 9LJ ("the Council"); and
- (2) [insert name] [individual name and address] or [a company registered in England and Wales under company number [insert number] and whose registered office is at [insert address]] ("the Consultant")

RECITALS:

- (A) The Council wishes to engage the Consultant to provide consultancy services for the provision of [insert details of services] to the Council.
- (B) The Consultant has agreed to provide the Services to the Council in accordance with the terms and conditions set out in this Contract.

1. INTERPRETATION

- 1.1 In this Contract the following terms and expressions shall mean:

"Additional Services"	means any services which fall outside the scope of the Specification which the Council may commission from time to time;
"Authorised Officer"	means the Council's representatives as set out in Schedule [1] or any other person substituted by the Council by notice to the Consultant;
"Business Continuity Plan"	means the business continuity and disaster recovery plan for the Contract (including details of resources used to provide them) to minimise the effect of any unplanned interruption or event that would significantly impact on the ability of the Consultant to perform the Services, in whole or in part, in accordance with the terms of this agreement;
"Commencement date"	means [insert date];
"Confidential Information"	means all information in whatever form (including without limitation, in writing, oral, visual or electronic form or any magnetic or optical disk or memory and wherever located) which has been designated as confidential by either Party in writing or that ought to be considered including but not limited to information which relates to the business, customers, clients, suppliers, products, affairs, properties, assets, trading practices, finances, services, developments, trade secrets, including without limitation Intellectual Property Rights, technical data, know-how, personnel and suppliers of either Party and commercially sensitive

	information which may be regarded as the confidential information of the disclosing Party;
"Consultant's Personnel"	means all employees, agents, consultants and contractors of the Consultant and/or any Sub-Contractor;
"Consultant's Proposal"	means the proposal(s) submitted by the Consultant which is annexed to this Contract as part of Schedule [1];
"Contract"	means this document and all schedules to it;
"Contract Charges"	means the prices (exclusive of any applicable VAT), payable to the Consultant by the Council under the Contract, as set out in Schedule [2], for the full and proper performance by the Consultant of its obligations under the Contract;
"Contract Material"	means 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 or its customers and any equipment, keys, hardware or software provided for the Consultant's use by the Council during the Services, and any 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 Services;
"Contract Period"	means the period from the Commencement Date to: <ul style="list-style-type: none"> (a) the Expiry Date; or (b) such earlier date of termination of the Contract in accordance with Law or the provisions of the Contract;
"Contract Price"	means the contract price set out in Schedule [2];
"Council's Consent"	means prior written consent of the Council, which may be given subject to such terms and conditions as the Council may see fit to impose;
"Data Loss Event"	means any event that results, or may result, in unauthorised access, disclosure or lack of access to Personal Data held by the Consultant under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
"Data Protection Impact"	

Assessment"	means an assessment by the Controller carried out in accordance with Section 3 of the UK GDPR and sections 64 and 65 of the DPA 2018;
"Data Protection Legislation"	means (i) all applicable UK law relating to the processing of personal data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (ii) (to the extent that it may be applicable) the EU GDPR. The UK GDPR and EU GDPR are defined in section 3 of the Data Protection Act 2018.
"Data Subject Request"	means a request made, by or on behalf of a Data Subject in accordance with rights granted by Data Protection Legislation to access their Personal Data;
"DPA 2018"	means the Data Protection Act 2018;
"EIRs"	means the Environment Information Regulations 2004;
"Emergency"	means an emergency event declared by the Council and/or by a UK government department;
"Expiry Date"	means [insert date];
"FOIA"	means the Freedom of Information Act 2000;
"Force Majeure"	means any event beyond the reasonable control of the Party affected and includes an event due to natural causes that happens independently of human intervention including strikes, lock-outs or other industrial disputes (excluding any industrial disputes involving the workforce of the Consultant), act of God, war, riot, civil commotion, compliance with any law or regulation, fire, flood or storm;
"UK GDPR"	means the UK General Data Protection Regulation and "Controller" , "Processor" , "Data Subject" , "Personal Data" , "Personal Data Breach" , "Data Protection Officer" take the meanings given in the UK GDPR;
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which could reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Intellectual Property Rights"	

or IPR	means patents, inventions, trademarks, service marks, domain names, logos, design rights whether registrable or otherwise, applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights, the right to use, the right to passing off and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom);
["Joint Controllers"]	means takes the meaning given in Article 26 of the UK GDPR;]
"Law"	means any legal provision a party must comply with including any applicable Act of Parliament, subordinate legislation, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of Court or directives or requirements of any regulatory body, whether in the UK or elsewhere;
"Law Enforcement Processing"	means processing under Part 3 of the DPA 2018.
"Party"	means the Consultant or the Council and "Parties" shall mean both of them;
"Personal Data"	shall have the same meaning as set out in the UK GDPR;
"Processor Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Processor and/or any Sub-Processor engaged in the performance of its obligations under this Contract;
"Protective Measures"	means appropriate technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation and this Contract, which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule [x] (Security).
"Records"	means all material including but not limited to books, documents, information, computer software, equipment, and data stored by any means

disclosed, or made available, by the Council to the Consultant in connection with the performance of this Contract or otherwise generated by the Consultant in connection with the performance of this Contract;

“Report”	means any report(s) to be produced for the Services;
“Services”	means all of the services to be provided by the Consultant as more particularly described in Schedule(s) [1] and [3] as may be amended from time to time;
“Specification”	means the specification for the Services set out in Schedule [1];
“Sub-contractor”	a third party with whom the Consultant enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents;
“Sub-processor”	means any third party in relation to this Contract appointed to process Personal Data on behalf of the Consultant or who processes Personal Data incidentally as a sub-contractor of the Consultant;
“Term”	[insert term] from the Commencement Date;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
“Week”	means 7 days from Sunday to Saturday (inclusive);
“Working Day”	means any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2 The headings in this agreement are inserted for convenience only and shall not affect its construction.

1.3 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.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.5 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

1.6 [A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 [and a company shall be treated, for the purposes only of the membership

requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) as a nominee].]

2. COMMENCEMENT AND TERM

- 2.1 The Consultant shall provide the Services from the Commencement Date until the Expiry Date unless terminated earlier pursuant to the rights of early termination set out in Clause 15.
- 2.2 The following documents form part of the Contract:
 - 2.2.1 these terms and conditions of agreement;
 - 2.2.2 the Services in Schedule 1;
 - 2.2.2.1 Part 1: the Specification;
 - 2.2.2.2 Part 2: the Consultant's Proposal in Schedule 2;
 - 2.2.2.3 Part 3: Contract Management;
 - 2.2.3 the Payments in Schedule 2; and
 - 2.2.4 Processing, Personal Data and Data Subjects of this Contract in Schedule 3
- 2.3 Nothing in this Contract shall operate to prevent the Council from engaging any other organisation or person to provide services similar to or the same as the Services.

3. PROVISION OF THE SERVICES

- 3.1 During the provision of the Services the Consultant [and the Consultant's Personnel] shall comply with the terms and conditions of this Contract and shall:
 - 3.1.1 perform the Services with all due care, skill and ability as may be expected of a person or an organisation with the experience of the Consultant in accordance with the Law and Good Industry Practice;
 - 3.1.2 use their best endeavours to promote the interests of the Council;
 - 3.1.3 in fulfilling any and all obligations under this Contract act fairly, avoid discrimination and promote equal opportunities;
 - 3.1.4 ensure that the Services are undertaken to the standards and in the manner, frequency, quantity and times specified in this Contract;
 - 3.1.5 comply with all applicable Laws, the Council's Contract Procedure Rules and all Council policies, guidance, codes of practice and financial regulations relevant to the Services;
 - 3.1.6 promptly provide all such information and assistance as is reasonably required by the Council for the provision of the Services;
 - 3.1.7 provide access to the Council's auditors, agents or representatives and provide them with inspection and/or copies of any documents where the Council reasonably requires; and
 - 3.1.8 do all things reasonably required by the Council to perfect or protect the rights of the Council including, without limitation giving or obtaining confidentiality undertakings acceptable to the Council in relation to any records.
- 3.2 The Consultant [and the Consultant's Personnel] warrants that they have not, and will not, offer or give or agree to give any person any gift or consideration of any kind as inducement or reward or committed any offence under the Bribery Act 2010 or have given any fee or reward the receipt of which is an offence under Section 117 Local Government Act 1972.

- 3.3 Unless the Consultant has been specifically authorised to do so by the Council in writing, the Consultant [and/or any of the Consultant's Personnel] shall not:
- 3.2.1 have any authority to incur any expenditure in the name of or for the account of the Council; or
 - 3.2.2 hold themselves out as having authority to bind the Council.
- 3.3 The Council is a living wage foundation (Living Wage) accredited employer and the Consultant is required to pay Consultant's Personnel the Living Wage pay rates as a minimum requirement. The Consultant agrees to provide the Council with a plan prior to or on commencement of this Contract demonstrating how it will implement the Living Wage Foundation rates of pay.

4. PAYMENT

- 4.1 The Contract Price is set out in the Pricing Schedule (Schedule [2]).
- 4.2 In consideration of and subject to the satisfactory performance of the Services, the Council shall pay the Consultant the Contract Price, within 30 days of receipt of a valid and undisputed Invoice.
- 4.3 For the purposes of this Clause 4 a valid invoice must comply with the following provisions:
- 4.3.1 the amount claimed in the invoice is due for payment;
 - 4.3.2 the amount claimed in the invoice is correctly calculated;
 - 4.3.3 the invoice correctly identifies the Services performed;
 - 4.3.4 the invoice bears a valid official Council reference number;
 - 4.3.5 where Value Added Tax is payable a valid VAT invoice is provided; and
 - 4.3.6 the Council has received all additional information requested and is satisfied as to the amounts properly payable.
- 4.4 The invoice must be sent to the Authorised Officer within [14] days after the end of each calendar month.
- [4.5 The Council shall reimburse all reasonable expenses properly and necessarily incurred by the Consultant in providing the Services provided that:
- 4.5.1 expenses are agreed in writing with the Council; and
 - 4.5.2 receipts or other appropriate evidence of payment are produced to the Council evidencing that the amounts were actually incurred.]
- OR
- [4.5 The Contract Charges are all inclusive and the Consultant is not entitled to claim expenses incurred in providing the Services.]
- 4.6 The Consultant shall provide to the Council access to all financial, managerial and cost information held by the Consultant relating to the Services.
- 4.7 Any amounts recoverable from or payable by the Consultant to the Council may be set off or deducted from any amount due, or which become due, to the Consultant under this or any other agreement with the Council.

5. NO AGENCY OR EMPLOYMENT

5.1 The Consultant agrees that it will not by virtue of this Contract be or become (or represent itself or allow itself to be represented as) an employee, worker, partner or direct agent of the Council and the Consultant shall not hold itself out as such.

6. TAX INDEMNITY

6.1 The Consultant shall be liable for and shall indemnify the Council against any claims for payment of tax, national insurance contributions, liabilities, charges and duties relating to any payments or arrangements in connection with this Contract.

7. CONFLICT OF INTEREST

7.1 The Consultant shall not be engaged, employed or concerned in any other business, trade, profession or other activity which may place the Consultant in a position where it has a potential or actual conflict of interest with the Council.

8. ASSIGNMENT AND SUB-CONTRACTING

8.1 The Consultant shall not assign, transfer, charge, or subcontract any or all of its rights and obligations under this Contract without the Council's prior consent in writing.

9. NON-SOLICITATION

9.1 The Consultant agrees that for a period of one (1) year after termination of this Contract the Consultant shall not divert or attempt to divert from the Council any business of any kind in which it is engaged, or employ, solicit for employment, or recommend for employment any person employed by the Council.

10. INTELLECTUAL PROPERTY RIGHTS (IPR)

10.1 The Consultant hereby assigns to the Council all existing and future IPR in the Services and title and IPR to all Contract Material shall vest in the Council absolutely.

10.2 The Consultant hereby irrevocably waives all moral rights under the Copyright, Designs and Patents Act 1988 (and all similar rights in other jurisdictions) which the Consultant has or will have in any existing or future works.

10.3 IPR in any Contract Material supplied to the Consultant by the Council for reproduction or guidance remains vested in the Council.

10.4 The Consultant warrants that Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract and that in delivering the Services the Consultant will not infringe any Intellectual Property Rights of any third party

10.5 The Consultant agrees to indemnify and keep indemnified the Council against all or any costs, actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council may suffer or incur or for which the Council may become liable, due to any breach of this Clause 10.

10.6 Upon the expiration or earlier termination of this Contract, the Consultant will deliver to the Council Records, Contract Material and any copies and, transfer or have transferred any IPR to the Council.

11. CONFIDENTIALITY AND PUBLICITY

- 11.1 The Consultant shall not use or disclose to any person either during or at any time after the engagement, any Confidential Information of the Council.
- 11.2 The restriction in clause 11.1 does not apply to:
 - 11.2.1 any use or disclosure authorised by the Council or as required by law; or
 - 11.2.2 any information which is already in, or comes into, the public domain otherwise than through the Consultant's unauthorised disclosure.
- 11.3 All documents, manuals, hardware and software provided for the Consultant's use by the Council, and any data or documents (including copies) produced, maintained or stored on the Council's computer systems or other electronic equipment (including mobile phones if provided by the Council), remain the property of the Council.
- 11.4 The Consultant shall not make any public statement or press release in connection with this Contract (including the fact that it is Party to this Contract) without the prior written approval of the Council

12. VARIATION

- 12.1 The Council may by notice in writing require the Consultant to vary the Services in purpose, scope or timing.
- 12.2 No variation to this Contract will take effect unless it is in writing.

13. DATA PROTECTION

- 13.1 The Parties acknowledge that for the purposes of 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 3 by the Controller and may not be determined by the Consultant.
- 13.2 The term "processing" and any associated terms are to be read in accordance with Article 4 of the UK GDPR.
- 13.3 The Consultant shall notify the Council immediately if it considers that any of the Council's instructions is likely to infringe Data Protection Legislation.
- 13.4 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:
 - 13.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 13.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 13.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 13.4.4 the measures envisaged to address the risks, including safeguards security measures and mechanisms to ensure the protection of Personal Data.
- 13.5 The Consultant shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

13.5.1 process that Personal Data only in accordance with Schedule 3, 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;

13.5.2 ensure that it has in place Protective Measures which are appropriate to protect against a Data Loss Event which the Council may reasonably reject. In the event of the Council reasonably rejecting Protective Measures put in place by the Consultant, the Consultant must propose alternative Protective Measures to the satisfaction of the Council. Failure to reject shall not amount to approval by the Council of the adequacy of the Protective Measures. Protective Measures must take account of the:

13.5.2.1 nature of the data to be protected;

13.5.2.2 harm that might result from a Data Loss Event;

13.5.2.3 state of technological development; and

13.5.2.4 cost of implementing any measures;

13.5.3 ensure that;

(i) the Consultants Personnel do not process Personal Data except in accordance with this Contract and in particular the provisions in Schedule [3].

(ii) 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:

(a) are aware of and comply with the Consultant's duties under this Clause 13;

(b) are subject to appropriate confidentiality undertakings with the Consultant or any Sub-processor;

(c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and

(d) have undergone adequate training in the use, care, protection and handling of Personal Data;

13.6.5 do 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:

13.6.5.1 the destination country has been recognised as adequate by the UK government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018;

13.6.5.2 the Council and the Consultant has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 DPA 2018) as determined by the Council;

13.6.5.3 the Data Subject has enforceable rights and effective legal remedies;

13.6.5.4 the Consultant complies with its obligations under Data Protection Legislation by providing an appropriate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations);

13.6.5.5 the Consultant complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data; and

- 13.6.5.6 at the written direction of the Council, the Consultant shall delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Consultant is required by Law to retain the Personal Data.
- 13.7 Subject to Clause 13.9, the Consultant shall notify the Council immediately if it:
- 13.7.1 receives a Data Subject Request (or purported Data Subject Request);
 - 13.7.2 receives a request to rectify, block or erase any Personal Data;
 - 13.7.3 receives any other request, complaint or communication relating to either Party's obligations under Data Protection Legislation;
 - 13.7.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 13.7.5 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
 - 13.7.6 becomes aware of a Data Loss Event.
- 13.8 The Consultant's obligation to notify under Clause 13.7 shall include the provision of further information to the Council in phases, as details become available.
- 13.9 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 13.6 (and insofar as possible within the timescales reasonably required by the Council) including but not limited to promptly providing:
- 13.9.1 the Council with full details and copies of the complaint, communication or request;
 - 13.9.2 such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Request within the relevant timescales set out in Data Protection Legislation;
 - 13.9.3 the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 13.9.4 assistance as requested by the Council following any Data Loss Event; and
 - 13.9.5 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.
- 13.10 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:
- 13.10.1 the Council determines that the processing is not occasional;
 - 13.10.2 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
 - 13.10.3 the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 13.11 The Consultant shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.

- 13.12 Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- 13.13 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Consultant must:
- 13.13.1 notify the Council in writing of the intended Sub-processor and processing;
 - 13.13.2 obtain the written consent of the Council;
 - 13.13.3 enter into a written agreement with the Sub-processor which substantially gives effect to the terms set out in this Clause 13 such that they apply to the Sub-processor; and
 - 13.13.4 provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 13.14 The Consultant shall remain fully liable for all acts or omissions of any Sub-processor.
- 13.15 The Consultant shall indemnify and keep indemnified the Council on written demand against all claims, proceedings, losses and any other liability (and fines, damages and costs awarded by a body with enforcement powers or a tribunal or court of competent jurisdiction) arising from or in connection with a breach by the Consultant of this clause and all reasonable expenses incurred by the Council in defence of any such claim or proceedings.
- 13.16 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 Contract).
- 13.17 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 Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 13.18 The provisions of this Clause 13 shall apply during the Contract Period and indefinitely after its expiry.
- 13.19 The Consultant shall and shall ensure that its employees and sub-contractors (if any) at all times comply with any relevant Code of Practice issued under Data Protection Legislation.
- [13.20 Where the Parties include two or more Joint Controllers as identified in Schedule [3] in accordance with GDPR Article 26, those Parties shall enter into a joint Controller agreement based upon the terms outlined in Schedule [3] in replacement of Clauses 13.1-13.19 for the Personal Data under Joint Control].

14. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS

- 14.1 The Consultant acknowledges that the Council is subject to FOIA and the EIRs and shall assist and cooperate with the Council to enable the Council to comply with its information disclosure obligations.
- 14.2 The Consultant will act in accordance with the FOIA and these Codes of Practice and the EIRs to the extent that they apply to the Consultant's performance under the Contract.

- 14.3 The Consultant acknowledges that the Council may be subject to governmental codes of practice or guidance relating to a transparency agenda, such as the "Local Government Transparency Code 2015". Notwithstanding any other provision of this Contract the Council is permitted to publish this Contract in its entirety (subject to any information which is redacted or exempt from disclosure in accordance with the provisions of the FOIA).

15. TERMINATION

- 15.1 Without prejudice to its other rights and powers under this Contract the Council may at any time terminate the Contract with the Consultant upon providing [4 weeks' notice].
- 15.2 The Council may at any time terminate the Contract with the Consultant with immediate effect:
- 15.2.1 a material breach of any obligations under the Contract;
 - 15.2.2 the Consultant committing any offence under the Bribery Act 2010 or has given any fee or reward the receipt of which is an offence under Section 117 Local Government Act 1972; or
 - 15.2.3 wilful neglect or failure to remedy any default in providing the Services.
- 15.3 Upon expiry or termination of the Contract the Council shall have no further liability to make any payment to the Consultant.
- 15.4 Any delay by the Council in exercising its rights to terminate shall not constitute a waiver of any of its rights.

16. OBLIGATIONS ON EXPIRY OR TERMINATION

- 16.1 On expiry or termination of the Contract, the Consultant shall:
- 16.1.1 immediately deliver to the Council all Council Material, Property and Confidential Information in its possession or under its control;
 - 16.1.2 irretrievably delete any information relating to the Council on any magnetic or optical disk or memory and all matters derived from such sources which is in its possession or under its control; and
 - 16.1.3 cease to use the Contract Material and Intellectual Property.

17. INSURANCE AND INDEMNITY

- 17.1 The Consultant shall be liable for and shall indemnify the Council for any expense, loss, liability, costs (including reasonable legal costs), damages, actions, claims demands or proceedings (including personal injury or death) arising from any breach by the Consultant [or Consultant's Personnel] of the terms of this Contract, including any negligent or reckless act, omission or default in the provision of the Services.
- 17.2 The Consultant shall throughout the Contract period maintain in force, and provide evidence of, policies of insurance with a reputable insurance company acceptable to the Council in respect of:
- [17.2.1 professional indemnity in the sum of £2 (two) million pounds (which policy shall be maintained throughout the Contract term and for a further 6 years thereafter);]

- 17.2.2. public liability in the sum of £5 (five) million pounds; and
- 17.2.3 employer's liability in the sum of £10 (ten) million pounds;

and such levels of cover shall be in respect of any incident or series of incidents arising out of a single event.

17.3 Nothing in this Contract excludes or limits either Party's liability in respect of:

- 17.3.1 death or personal injury caused by its negligence or that of its staff;
- 17.3.2 fraud or fraudulent misrepresentation by it or that of its staff; and
- 17.3.3 any other matter which by Law, may not be excluded or limited.

18. FORCE MAJEURE, BUSINESS CONTINUITY AND SUSTAINABILITY

- 18.1 Neither Party shall be liable to the other Party for any delay in performance, or failure to perform, its obligations under the Contract to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the contract for a period of in excess of [4] weeks, either Party may terminate the Contract with immediate effect by notice in writing to the other Party.
- 18.2 The Consultant shall provide a Business Continuity Plan within 14 days of commencement of the Contract which will include measures to seek to ensure business continuity and retention of the Contract and to minimise potential or actual disruption to the Services.
- 18.3 The Consultant shall ensure that it is able to implement the provisions of the Business Continuity Plan at any time in accordance with the terms of this agreement.
- 18.4 The Consultant shall test the Business Continuity Plan on a regular basis.
- 18.5 Following each test, the Consultant shall:
 - 18.5.1 send to the Council a written report summarising the results of the test; and
 - 18.5.2 promptly implement any actions or remedial measures which the Council considers to be necessary as a result of those tests.
- 18.6 The Consultant shall implement the Business Continuity Plan if notified by the Council of an Emergency (which may include a Force Majeure event) within 48 hours or within such period of time as is required by the Council. Where the Business Continuity Plan is invoked this clause 18.6 shall take precedence over clause 18.1 (Force Majeure).
- 18.7 The Consultant shall use its best endeavours to mitigate the impact of an Emergency to continue to perform the Contract.
- 18.8 The Council will give notice to the Consultant when the Business Continuity Plan is to expire and the Council may extend the Business Continuity Plan, or the Contract shall continue under the terms and conditions of this agreement, or the Council may terminate the agreement in accordance with the terms and conditions of this agreement.

18.9 Whilst the Business Continuity Plan is in force the Consultant shall take the following steps:

18.9.1 use its best endeavours to perform all of its obligations under the Contract and to do such other acts as the Council may reasonably require;

18.9.2 provide information relating to its costs on an open book basis and act transparently providing information in relation to all of its costs data making this available to the Council including details of payments to its employees and sub-contractors;

18.9.3 put in place measures to ensure continued payment to employees, suppliers and its sub- contractors; and

18.9.4 the Consultant agrees that it shall not profit from the Emergency whilst the Business Continuity Plan is in force.

18.10 Whilst the Business Continuity Plan is in force the Council may acting reasonably and at its discretion put in place the following temporary measures to support the Consultant where the Consultant can demonstrate a need for relief provided that it has no recourse to business interruption insurance or another form of relief:

18.10.1 provide relief to the Consultant by agreeing an extension of time for performance under the Contract; and/or

18.10.2 provide relief in relation to any deductions under the agreement (including service credits where applicable); provided that at the time the Business Continuity Plan is invoked the Consultant is not in default in relation to its performance and/or is not in breach of this agreement.

18.11 The Consultant will comply with all relevant sustainability guidelines.

19. DISPUTE RESOLUTION

19.1 The parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of the Contract.

19.2 If the parties cannot resolve a dispute within [30] days and either of them wishes to continue the dispute they shall try, acting reasonably, to reach an agreement that the dispute will be referred to mediation. The mediator if not appointed by agreement between the parties will be nominated by the Centre for Dispute Resolution ("CEDR") in London. The rules of procedure for the mediation shall be determined by the mediator in consultation with the parties.

20. CONTRACT MANAGEMENT

20.1 The Council will appoint an Authorised Officer as its representative for the purposes of this Contract as set out in Schedule 1.

20.1.1 The contract will be managed in accordance with the Council's Contract Management Framework and according to the risk level of the contract for continuous improvement in delivery and efficiencies.

20.1.2 This contract has been assessed by the council as [*low medium high*] risk (delete as appropriate).

21. MODERN DAY SLAVERY

The Consultant undertakes, warrants and represents that:

- 21.1 it will comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015
- 21.2 neither the Consultant nor any of its officers, employees, agents or sub-Consultants has
- 21.3 committed an offence under the Modern Slavery Act 2015 (a MSA Offence); or
- 21.4 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- 21.5 becomes aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015
- 21.6 committed an MSA Offence and shall notify the Authority immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents, or sub-Consultants have breached or potentially breached any of the terms of the Modern Slavery Act 2015.

[22. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 22.1 The Consultant warrants that always for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Consultant in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 22.2 The Consultant shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 22 are complied with and the Consultant shall provide evidence of DBS checks if requested at any time by the Council.
- 22.3 The Consultant shall refer information about any person carrying out the Services to the Disclosure and Barring Service where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users children or vulnerable adults.
- 22.4 Both parties will comply with all applicable requirements of the General Data Protection Regulation ((EU) 2016/679) and the Data Protection Act 2018 (the "Data Protection Legislation"). The parties acknowledge that, for the purposes of the Data Protection Legislation, the Consultant is the Controller in respect

of DBS Checks carried out on individuals. The Consultant will ensure that it has all necessary appropriate consents and notices in place to obtain the DBS Checks and to enable lawful disclosure of the DBS certificates and any other relevant personal data to the Consultant for the duration and purposes of this Contract.

22.5 The parties acknowledge that the Consultant is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

22.6 The Consultant shall:

- (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service ("DBS Check"); and
- (b) monitor the level and validity of the checks under this clause for each member of staff
- (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users vulnerable adults and children]

23. NOTICES

23.1 Notices must be in writing and may be delivered by prepaid postage, by hand or by acknowledged e-mail transmission to the parties at the address specified in this clause or other address in England subsequently notified by a Party to the other.

23.2 Notices will be deemed to be served:

23.2.1 if sent by post, two (2) days after posting;

23.2.2 immediately if delivered personally.

23.3 The addresses for notices are set out in Schedule [3].

24. RIGHTS OF THIRD PARTIES

24.1 A person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

25. GOVERNING LAW AND JURISDICTION

25.1 The construction, validity, performance and execution of this Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

AS WITNESS the hands of the Parties or their duly authorised representatives

SIGNED by or on behalf of the Council

SIGNED by or on behalf of the Consultant

Or

[This Contract has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.]

Executed as a Deed by WINCHESTER CITY
COUNCIL by affixing hereto the
Common Seal in the presence of:-

.....
Authorised Signatory

Executed as a deed by
[NAME OF CONSULTANT]
acting by **[NAME OF FIRST DIRECTOR]**,
a director and **[NAME OF SECOND
DIRECTOR/SECRETARY]**, [a director
OR its secretary]

.....
Director

.....
[Director OR Secretary]

OR

Executed as a deed by
[NAME OF CONSULTANT]
acting by **[NAME OF DIRECTOR]**,
a director in the presence of:

.....
Director

.....
(Signature of Witness)

[NAME, ADDRESS AND
OCCUPATION OF WITNESS]

SCHEDULE 1 - SERVICES

PART 1 - SPECIFICATION

(Insert specification that went out, if applicable)

SCHEDULE 1 - SERVICES

PART 2 - THE CONSULTANT'S PROPOSAL

(this will be everything that the winning tenderer submits, except that if they send in their own terms of business this section will make it clear that those are not accepted – this deal runs on our terms)

(attach the Proposal)

SCHEDULE 1 – SERVICES
PART 3 – CONTRACT MANAGEMENT

Representatives

1. Authorised Officer – [for the Council insert details]

Name
Role
Address
Email

2. The Consultant's Representative

Name
Role
Address
Email

Notices

Addresses for Notices

Council

All notices for the Council are to be addressed to the Authorised Officer:
[INSERT ADDRESS DETAILS]

Consultant

All notices for the Consultant are to be addressed as follows:
[INSERT ADDRESS DETAILS]

Services

1. Location where the Services are carried out
2. Reporting requirements
3. Specific tasks and time spent on tasks by Consultants Personnel
4. Timetable

[Need to put in here exactly what the outputs are; what the report needs to say dates etc. There may be different sections of work, different reports/bits of reports to be produced at different times etc.]

[A: Key Dates/Milestones]

Services	Key Dates	Approval required

5. **Draft report:** Provide to WCC by [insert date] a full draft of the final report to include (but not be limited to) a clear explanation of the process followed and the methodology used
6. **Final report:** provide to WCC final report by [insert date] as above, reviewed following WCC comments
7. **Members Presentation:** Date to be confirmed?
8. **Final report:** (Timetable Date [insert date] as above, reviewed following WCC comments

Each of the documents to be produced is to have been delivered to the Council in its final agreed form (and accepted by the Council as apparently satisfactory for its purposes) by 4.30pm on the date stated against that document in the table above.

SCHEDULE 2 – PAYMENT

[Need to put in here payment provisions i.e., whether lump sum or payment at intervals linked to dates? (on receipt of full and accurate information and documentation as set out below)]

Contract Price is [] (exclusive of VAT?)

Contract Payments are as follows: -

[Consider and set out:

Are the charges payable at fixed intervals e.g., monthly?

Are the charges linked to milestones?

Are they payable at the end of the project?

[Expenses (state if payable or not)]

[If expenses are payable

Set out details of what needs to be provided

How are expenses approved – set out process – agreed in advance?

Any caps or other restrictions on expenses]

Or

[The Contract Charges are inclusive of all expenses]

[Additional Services (and if expenses are payable)]

Invoice Requirements

[Specify documentation required to be provided for a valid invoice as set out in 4.3]

SCHEDULE 3 - Processing, Personal Data and Data Subjects of this Contract

This Schedule shall be completed by the Council, who may take account of the view 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 Council's Data Protection Officer is Fiona Sutherland who can be contacted at FSutherland@winchester.gov.uk.
2. The Consultant's Data Protection Officer is [insert details] who can be contacted at [insert details].
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 3.

Description	Details
Identity of the Controller and Processor	<p>The Parties acknowledge that for the purposes of Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Clause 1.1.</p> <p>[Guidance: You may need to vary this section where (in the rare case) the Customer and Contractor have a different relationship. For example where the Parties are Joint Controllers. You should take advice before doing so.]</p>
Subject matter of the processing	<p><i>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</i></p> <p><i>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide [insert description of relevant service].]</i></p>
Duration of the processing	<p><i>[Clearly set out the duration of the processing including dates]</i></p>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage,</i></p>

	<p><i>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.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</i></p>
Type of Personal Data being Processed	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.]</i>
International transfers and legal gateway	<i>[Explain where geographically personal data may be stored or accessed from. Explain the legal gateway you are relying on to export the data e.g. adequacy decision, EU SCCs, UK IDTA. Annex any SCCs or IDTA to this contract]</i>
Plan for return and destruction of the data once the processing is complete	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>