

**DATED**

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**CONSULTANCY AGREEMENT**

between

**North Northamptonshire Council**

and

**XXXXXX**

## BETWEEN

- (1) North Northamptonshire Council of of Sheerness House, 41 Meadow Road, Kettering NN16 8TL (the “Council”); and
- (2) xxxx with Company Registration No xxxx whose offices are at xxxxx (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”	tbc
“Commercially Sensitive Information”	the information listed in Schedule 4 comprising the information of a 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 Protection Legislation”	means the Data Protection Act 2018 as amended from time to time and any successor legislation in the UK, including but not limited to the General Data Protection Regulation (EU) 2016/679 (“GDPR”) which has been directly imported into the law of England and Wales, Scotland and Northern Ireland (UK Law) by virtue of section 3 of the European Union (Withdrawal) Act 2018 as amended by the Data Protection, Privacy and Electronic Communications (Amendment Etc.) (EU Exit) Regulations 2019 and , all other legislation enacted in the UK in respect of the protection of personal data and any code of practice or guidance published by the ICO (or equivalent regulatory body) from time to time

“Confidential Information”	<p>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:</p> <ul style="list-style-type: none"> <li>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;</li> <li>b. any information developed by the parties in the course of carrying out this Agreement;</li> <li>c. Personal Data;</li> <li>d. any Commercially Sensitive Information.</li> </ul>
“Consultant’s Representative”	<p>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;</p>
“Council’s Authorised Officer ”	<p>the officer responsible for the monitoring and management of this Agreement, or such other person as the Council may otherwise advise in writing;</p>
“Expiry Date”	<p>30 April 2024</p>
“Fees”	<p>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;</p>
“Force Majeure Event”	<p>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;</p>
“Laws”	<p>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;</p>
“Prohibited Act”	<ul style="list-style-type: none"> <li>(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: <ul style="list-style-type: none"> <li>(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</li> <li>(ii) for showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Council;</li> </ul> </li> </ul>

(b) committing any offence:

- (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.

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

3.1.3 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;

3.1.4 co-operate with the Council in all matters relating to the Services;

3.1.5 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

3.1.6 use its best endeavours to promote the interests of the Council.

3.2 The Consultant shall meet all the requirements set out in Annex 1 of the Specification (“the Requirements”) including but not limited to meeting the requirements set out in clause 3.2 of the Specification.

## 4. FEES AND PAYMENT

- 4.1 In consideration of the performance of the Consultant's obligation under the Agreement and subject to (a) the Consultant achieving the Requirements set out in Annex 1 of the specification, and (b) delivering the survey in line with the requirements of the Regulator of Social Housing by 31st March 2024, the Council shall pay the Fees to the Consultant.
- 4.2 The Council 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 and in the event of the Consultant's failure to satisfy the requirements of clause 4.1(b) within the period set out hereto, the Council shall charge the Consultant a contractual penalty of 50% which shall be deducted from the Fees payable to the Consultant.
- 4.3 The Fees shall be as set out in the Schedule 3, and payable within thirty (30) days of a correctly rendered invoice. No extra charges shall be effective unless agreed in writing and signed by the Council.
- 4.4 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 Consultant shall be responsible for any costs, expenses and insurances associated with any travel required under for the provision of the Services. The Council 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 4.4 - 4.5 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 4.4 - 4.54 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 The Services involve the Processing of Personal Data and the provisions set out in Schedule 4 apply
- 10.2 10.3 Notwithstanding the provisions of clause 10.1, both parties will comply with all applicable requirements of the Data Protection Legislation and any applicable Laws.

## 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 Council.
- 13.5 Where any Intellectual Property are owned by a third party, or outside the scope of the provisions of clause 13.4, the Consultant hereby procures to grant the Council exclusive and irrevocable licence to use suce 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. NOT USED

28. ENTIRE AGREEMENT

28.1 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.

28.2 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.

29. 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.

30. NO PARTNERSHIP OR AGENCY

30.1 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.

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

31. VARIATION

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

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:

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

(1) Signature ..... (Director)

Print .....

Director/Secretary

(2) Signature .....

Print .....

## SCHEDULE 1 - THE SERVICES



NNC Specification  
for Tenant Satisfacti



## SCHEDULE 2 - TENDER RESPONSE

### SCHEDULE 3 - FEES

Date	Amount	Deliverable
		Survey delivered in line with the requirements of the Regulator of Social Housing by 31st March 2024

## SCHEDULE 4 - Data Processing Schedule

### Data Processing Schedule

#### 1 DESCRIPTION OF SERVICES

- 1.1 Provision of a contract to conduct the annual Tenant Satisfaction Measures (TSMs) Survey on behalf of the Council, in line with the requirements of the Regulator of Social Housing.
- 1.2 The survey must comprise of all 12 of the TSMs as specified in the Regulator of Social Housing Technical requirements and be conducted in line with the Regulator of Social Housing Tenant Survey Requirements. The TSMs need to be collected and reported in a way that adheres to the Market Research Society (MRS) Code of Conduct.

#### 2 ROLES OF THE PARTIES

- 2.1 The relationship between the parties is Controller & Processor.

The Data Controller is: North Northamptonshire Council (NNC)

The Data Processor is: TBC

The Data Discloser is: NNC and TBC

The Data Recipient is: NNC and TBC

The data controllers Data Protection Officer's contact details:

NNC DPO Email: [dpo@northnorthants.gov.uk](mailto:dpo@northnorthants.gov.uk)

- 2.2 All parties to this schedule must appoint and communicate to each other the Specific Points of Contact (SPOC). The SPOC's within each organisation will be the first point of contact for questions about this schedule.

NNC	
Name	
Job Title	Housing Policy and Performance Manager

Email	
<b>TBC</b>	
Name	
Job Title	
Email	

- 2.3 Data controllers are responsible for ensuring that the processing of personal data takes place in compliance with UK GDPR and the Data Protection Act 2018. Data controllers have the right and obligation to make decisions about the purposes and means of the processing of personal data.
- 2.4 Unless legally exempt, the provider is obligated to provide the data controller with confirmation and evidence of ICO registration.
- 2.5 Each party ensures that it has all necessary notices and consents in place to enable lawful transfer of the shared personal data between the parties for the agreed purposes; and for tenants to complete any online surveys.

### **3 PURPOSE AND SCOPE**

- 3.1 The agreed purpose of this data processing is to enable commission of the Tenant Satisfaction Survey; and provide the Data Processor with the applicable data relating to North Northamptonshire Council tenants, in order to send out the tenant perception survey. This is to enable NNC to report on the required tenant satisfaction measures to the Regulator of Social Housing.
- 3.2 Each party considers this data processing initiative necessary to achieve the agreed purpose.
- 3.3 The aim of the data processing is to:
- To gather the views of our tenants on the homes they live in and the services we provide as a landlord; and
  - analyse and learn from the responses received in order to drive improvement to our services.
- 3.4 It will serve to benefit society by helping North Northamptonshire Council improve its services to its tenants by understanding their views. Tenants will benefit as NNC will be equipped with the knowledge of where we need to make improvements to our homes and the services provided.

### **4 Purpose Limitation**

- 4.1 Personal data will be processed only on the data controller's documented instructions and not be, shared, disclosed, or used in any way except:
- in accordance with this Schedule; or
  - as required by law.
- 4.2 As long as in keeping with this schedule and UK data protection legislation, the data processor may make its own day-to-day operational decisions, unless it is required to do otherwise by law.
- 4.3 Any data processing is undertaken in accordance with UK GDPR and the Data Protection Act 2018. Further details can be found in the [Housing options and homelessness privacy notice](#) on the [North Northamptonshire Council Website](#).
- 4.4 Where reporting and monitoring information is required to be provided to the data controller, all personal data should be anonymised, including information that if combined, would identify any living individual.
- 4.5 Subsequent instructions can also be given by the data controller throughout the duration of the processing of personal data, but such instructions shall always be documented and kept in writing, including electronically.
- 4.6 Under Article 28(3)(d) the data processor should not engage another data processor (a sub-processor) without the data controller's prior specific or general written authorisation.
- 4.7 Where the data processor intends to engage a sub-contractor pursuant to clause 4.6 above and intends for that sub-contractor to process any personal data relating to this agreement, it shall:
- notify the data controller in writing of the intended processing by the sub-contractor;
  - obtain prior written consent from the data controller to the processing;
  - enter into a written agreement incorporating terms which are substantially similar to those set out in this schedule. Where applicable the data processor is liable to the data controller for a sub-processor's compliance with its data protection obligations.
- 4.8 The data recipient shall:
- not transfer or otherwise process the personal / special category data outside the UK without obtaining the data controller's prior written consent, which will include the transfer instructions and obligations under Article 45, 46 & 49 UK GDPR.
  - not share the shared personal data with any third party without the consent of the data discloser in accordance with the data controllers transfer instructions.

## **5      LAWFUL BASIS**

5.1 The article 6 UK GDPR lawful basis for processing personal data is:

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; and

(c) processing is necessary for compliance with a legal obligation to which the controller is subject.

The governing legislation and guidance is:

- Housing Acts 1985; 1996; 2004 & 2006
- Housing Grants, Construction & Regeneration Act 1996
- Localism Act 2011

5.2 In respect of special categories of personal data, the UK GDPR Article 9 ground is:

(h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of [domestic law] or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3.

5.3 In respect of special categories of personal data, the applicable Data Protection Act 2018 Schedule 1 condition is Part 2 8 Equality of opportunity or treatment.

## **6 DATA USE PROVISIONS AND DATA QUALITY**

6.1 The Data Processor must only use the data to post a copy of the tenant perception survey to all North Northamptonshire Council tenants, including any necessary reminders. The Data Processor must not share this personal data with any other parties.

The method of collection for the tenant perception survey for the Council for 2023 / 24 will be both postal and available online to try and increase uptake of participation.

It is proposed an initial mailing to all tenants including questionnaire (printed in black and white), covering letter (1 page) and Freepost envelope.

A full reminder mailing (including questionnaire) will then be sent to those who have not responded if required to achieve a valid sample size.

Online survey information is to be made available on the survey / covering letter and also e-mailed to those tenants with e-mail addresses on the Council system.

The online survey must include links to applicable privacy notes and have the correct consent notices in place.

The provider will undertake full data entry requirements for the survey including cleaning and verifying the data before analysis.

6.2 The disclosing party is responsible for the quality of the data they are sharing.

- 6.3 Before sharing data, the disclosing party will check that the data being shared is accurate valid, reliable, timely, relevant, complete and up to date to the best of their knowledge. If sensitive data is being shared, which could harm the data subject if it was inaccurate, then particular care must be taken.
- 6.4 The parties shall ensure that the shared personal data remains confidential and that no one, including any member of any party's personnel, has access to the shared personal data other than those directly involved in, or connected with, the agreed purposes.
- 6.5 The data processor shall at the request of the data controller demonstrate that the concerned persons under the data processor's authority are subject to the abovementioned confidentiality.

## **7 CATEGORIES OF DATA SUBJECT**

- 7.1 All tenants of North Northamptonshire.

## **8 CATEGORIES OF PERSONAL DATA**

- 8.1 The data processor will be required to process the following data on the data controller's behalf, for the agreed purpose:
- Name
  - Postal address
  - ID reference number
- 8.2 None for monitoring and reporting purposes.

## **9 SPECIAL CATEGORIES OF PERSONAL DATA**

- 9.1 The data processor will be required to process the following special category data on the data controller's behalf, for the agreed purpose:
- Age
  - Gender
  - Ethnic group
  - Sexual orientation
  - Religion
- 9.2 This data will only be collected to ensure the results of the satisfaction survey are a true representative sample of all tenants at North Northants Council. This information will be anonymised but will enable the provider to analyse the data by

specific groups to understand respondents and also to build a tenant profile of the council tenants by the specified categories.

## **10 MONITORING AND REPORTING DATA**

- 10.1 To provide data tables and raw data to North Northamptonshire Council on completion of the fieldwork.
- 10.2 To produce a report of the results and an analysis of all responses which also includes a summary of the survey approach used to generate the TSMs as outlined by the Regulator of Social Housing in the Tenant Survey Requirements.

## **11 SECURITY MEASURES**

- 11.1 Data controllers and data processors are obliged under Article 32 to put in place appropriate technical and organisational measures to ensure the security of any personal data they process which may include, as appropriate:
  - encryption and pseudonymisation;
  - the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
  - the ability to restore access to personal data in the event of an incident; and
  - processes for regularly testing and assessing the effectiveness of the measures.
- 11.2 The data processors online survey system must adhere to applicable security industry standards and best practice such as ISO accreditation, Cyber essentials or other as appropriate.
- 11.3 All shared personal data shall be encrypted and transferred by secure methods approved by both parties.
- 11.4 It is the responsibility of each party to ensure that its staff members are appropriately trained to handle and process the shared personal data in accordance with the technical and organisational security measures set out in this schedule, together with any other applicable laws and guidance.

## **12 DATA TRANSFER AND ACCESS REQUIREMENTS**

- 12.1 Personal and special category data is to be shared with data processor via encrypted mail such as Egress. Anonymised data can be sent via email.
- 12.2 Data will be shared at the start and end of the contract.



- 12.3 Access will be limited to the parties authorised personnel only.
- 12.4 The parties may share personal data with permitted recipients where applicable by law or by virtue of this schedule. Permitted recipients are:
- Data controller to share data with the data processor only.
- 12.5 Access to personal data can be withdrawn, if access is no longer necessary, and personal data shall consequently not be accessible anymore to those persons.

## **13 RETENTION**

- 13.1 Personal information for the purpose of this processing will be kept by the data processor for the duration of the contract, unless otherwise permitted or obligated by statute or common law.

## **14 STORAGE**

- 14.1 Personal data is securely stored on data controllers and data processors systems.
- 14.2 Personal data will not be stored outside of the UK or EU, unless where adequacy can be demonstrated. If outside of the UK or EU, appropriate safeguards must be put in place, such as Standard Contractual Clauses.

## **15 DELETION**

- 15.1 On termination of the provision of personal data processing services, the data processor shall be under obligation to delete all personal data processed on behalf of the data controller and certify, in writing or via email to the data controller that it has done so.
- 15.2 The data processor will securely dispose personal data in line with the specified retention period. Disposal is to be undertaken via confidential waste for hard copy and permanent deletion from data processors systems (including backup and archive systems).
- 15.3 Deletion of personal data should be done in a secure manner, in accordance with the security requirements of Article 32 UK GDPR.

## **16 DATA SUBJECTS' RIGHTS (INDIVIDUAL RIGHTS REQUESTS)**

- 16.1 The parties each agree to provide such assistance as is reasonably required to enable the other parties to comply with Individual Rights Requests within the time limits imposed by UK data protection legislation.
- 16.2 The data processor will take appropriate technical and organisational measures to help the data controller respond to requests from individuals to exercise their rights.
- 16.3 The data processor shall, insofar as this is possible, assist the data controller in compliance with individual rights under UK GDPR.
- 16.4 Each party shall:
- promptly inform the other party about the receipt of any Individual Rights Request (within 48 Hours);
  - not disclose or release any shared personal data in response to an Individual Rights Request, without first consulting the other party wherever possible.
- 16.5 Each party is responsible for maintaining a record of individual requests for information, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and, where relevant, notes of any meeting, correspondence or phone calls relating to the request.

## **17 BREACH REPORTING & RESOLUTION OF DISPUTES WITH DATA SUBJECTS OR THE ICO**

- 17.1 Considering the nature of the processing and the information available, the data processor must assist the data controller in meeting its obligations to:
- keep personal data secure;
  - notify personal data breaches to the data controller, immediately/without undue delay of awareness to allow the data controller to comply with the requirement to notify the ICO (where appropriate) within the 72-hour deadline.
  - notify personal data breaches to data subjects only if instructed by data controller;
  - carry out data protection impact assessments (DPIAs) when required; and;
  - consult ICO where a DPIA indicates there is a high risk that cannot be mitigated.
- 17.2 In the event of a dispute or claim brought by a data subject or the ICO concerning the processing of shared personal data against either or both parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- 17.3 The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the ICO. If they do participate in the proceedings, the parties may elect to consider participating in any other arbitration,

mediation or other dispute resolution proceedings developed for data protection disputes.

- 17.4 Each party shall abide by a decision of a court in England or Wales or the ICO in relation to a dispute arising under this agreement.

## **18 AUDITS AND INSPECTIONS**

- 18.1 The data processor shall make available to the data controller all information necessary to demonstrate compliance with the obligations laid down in Article 28 UK GDPR and allow for and contribute to audits, including inspections, conducted by the data controller or another auditor mandated by the data controller.
- 18.2 The data processor shall be required to provide the supervisory authority, which pursuant to applicable legislation have access to the data controller's and data processor's facilities, or representatives acting on behalf of such supervisory authorities, with access to the data processor's physical facilities on presentation of appropriate identification.

## **20 INDEMNITY**

- 20.1 The data processor shall indemnify the data controller against any losses, damages, cost or expenses incurred by the data controller arising from, or in connection with, any breach of the data processors obligations under this schedule.

## **21 WAIVER [ONLY INCLUDE IF NOT COVERED IN THE CONTRACT. IF COVERED DELETE SECTION]**

- 21.1 No failure or delay by a party to exercise any right or remedy provided under this schedule or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **22 GOVERNING LAW & JURISDICTION [ONLY INCLUDE IF NOT COVERED IN THE CONTRACT. IF COVERED DELETE SECTION]**

- 22.1 Any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this schedule or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 22.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this schedule or its subject matter or formation.

## **23 REVIEW / VARIATION / TERMINATION**

- 23.1 No variation of this schedule shall be effective unless it is in writing and signed by the parties.
- 23.2 If, during the term of this schedule, UK data protection legislation changes in a way that this schedule, is no longer adequate for the purposes of governing lawful data sharing exercises, the parties shall enter into good faith negotiations to review this schedule to ensure continued lawfulness.
- 23.3 The schedule will expire on in line with the contract end date.

## Glossary of Terms

Term	Definitions & Interpretation
Adequacy	This is a status granted by the European Commission to countries outside the European Economic Area (EEA), who provide a level of personal data protection comparable to that provided in the UK and EU. If adequacy has not been granted, you may not be able to use that supplier.
Agreed Purposes	All purposes associated with the operation of the annual Tenant Satisfaction Measures (TSMs), in particular where service delivery requires input from the other party to ensure continuity for the customer and/or where service is delivered on behalf of one or other party.
Commencement Date	TBC
Data Controller	Takes the meaning given in the UK GDPR.
Data Processor	Takes the meaning given in the UK GDPR.
Joint Controller	Takes the meaning given in the UK GDPR.
Data Discloser	The Party sharing the Shared Personal Data.
Data Recipient	The Party receiving the Personal Data.
Data Protection Legislation	Any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the Processing of Personal Data to which a Party is subject, including the Data Protection Act 2018 and the UK General Data Protection Regulation as defined in the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (hereinafter "UK GDPR"), and all legislation enacted in the UK in respect of the protection of personal data; and (b) any code of practice or guidance published by the ICO (or equivalent regulatory body).
Data Subject	Takes the meaning given in the UK GDPR.
ICO	UK Information Commissioner's Office, or any successor or replacement body from time to time
Individual Rights Request	A request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation in relation to their Personal Data.
UK GDPR	UK General Data Protection Regulation.

Permitted Recipients	Third parties to whom each Party is permitted to disclose the Personal Data.
Personal Data	Takes the meaning given in the UK GDPR.
Personal Data Breach	Takes the meaning given in the UK GDPR and includes any actual or suspected, threatened or 'near miss' personal data breach in relation to the personal data.
Personnel	All persons engaged or employed from time to time by either party in connection with this Agreement, including employees, consultants, contractors and permitted agents.
Processing	Takes the meaning given in the UK GDPR.
Shared Personal Data	The Personal Data to be shared, where necessary only, between the Parties of this Agreement.
Security Requirements & Measures	The requirements and measures regarding the security of personal data, as set out in Articles 28 and 32 of the GDPR.
Special Categories of Personal Data	The categories of Personal Data set out in Article 9(1) of the UK GDPR.