

DATE _____ **20[]**

(1) WINCHESTER CITY COUNCIL

AND

(2) [insert name of Consultant]

CONTRACT FOR THE PROVISION OF CONSULTANCY SERVICES

Catherine Knight
Service Lead
Legal Services
City Offices,
Colebrook Street,
WINCHESTER,
Hants,
S023 9LJ

REF:

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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] 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 Consultant is in business as a [insert details].
- (B) The Council, in view of the Consultant's relevant skills, experience and knowledge wishes to engage the Consultant to provide consultancy services for the provision of [insert details of services] to the Council.
- (C) The Consultant has agreed to provide the Services to the Council on and subject to 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, products, affairs, properties, assets, trading practices, finances, services, developments, trade secrets, Intellectual Property Rights, technical data, know-how, personnel and suppliers of either Party and commercially sensitive 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 Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
"Data Protection Impact Assessment"	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data
"Data Protection Legislation"	means the GDPR, the LED and any applicable national implementing Laws as amended from time to time by the DPA 2018 to the extent that it relates to processing of personal data and privacy and all applicable Law about the processing of Personal Data and Privacy;
"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;
"GDPR"	means the General Data Protection Regulation (<i>Regulation (EU) 2016/679</i>) and "Controller" , "Processor" , "Data Subject" ,

	<p>“Personal Data“, “Personal Data Breach“, “Data Protection Officer“ take the meanings given in the GDPR;</p>
“Good Industry Practice”	<p>means standards, practices, methods and procedures confirming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which could reasonable and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;</p>
[“Index”	<p>means the Consumer Prices Index or CPI]</p>
“Intellectual Property Rights or IPR”	<p>means patents, inventions, trade marks. 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.</p>
[“Joint Controllers”	<p>means where two or more Controllers jointly determine the purposes and means of processing;]</p>
“Law”	<p>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, enforceable EU right within the meaning of section 2 of the European Communities Act 1972, 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;</p>
“LED”	<p>means Law Enforcement Directive (<i>Directive (EU) 2016/680</i>)</p>
“Party”	<p>means the Consultant or the Council and “Parties” shall mean both of them</p>
“Personal Data”	<p>shall have the same meaning as set out in the Data Protection Act 1998;</p>

“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 Agreement;
“Protective Measures”	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it
"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 [1] 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 Agreement 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 In this Contract unless the context requires otherwise:

- 1.2.1 a reference to the singular shall include the plural and vice versa;
- 1.2.2 a reference to one gender shall include any gender and “person” shall mean any person, firm or company or other legal entity;
- 1.2.3 references to any law, enactment, order, regulation, code of practice or other similar instrument will be construed as a reference as it is in force for the time being taking into account any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;
- 1.2.4 all references to agreements, documents or other instruments include a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- 1.2.5 headings are for convenience only and do not affect the interpretation of this Contract;
- 1.2.6 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 Schedule; and
- 1.2.7 unless stated otherwise, any reference to any approval by the Council, or any decision to be taken by the Council or discretion to be exercised by the Council, is an approval decision or discretion to be exercised in the absolute discretion of the Council.

2. COMMENCEMENT AND TERM

- 2.1 The Council shall engage the Consultant on the Commencement Date and the Consultant shall provide the Services on the terms of this agreement for the Contract Period, unless terminated earlier pursuant to the rights of early termination set out in this Contract.
- [2.2 The Council may extend the Contract Period for [2] consecutive periods of 12 months by giving written notice to the Consultant at least [1] calendar month prior to the end of the Contract Period or the extended Contract Period]
- 2.3 Nothing in this Agreement shall operate to prevent the Council from engaging any other organisation or person to provide services similar to or the same as the Services during the Contract Period.
- 2.4 The following documents form part of the Contract:
 - 2.4.1 these terms and conditions of agreement;
 - 2.4.2 the Services in Schedule 1 comprising:

- 2.4.2.1 Part 1: the Specification;
- 2.4.2.2 Part 2: the Consultant's Proposal in Schedule 2;
- 3.4.2.3 Part 3: Contract Management;
- 2.4.3 Payment in Schedule 2; and
- 2.4.4 Processing, Personal Data and Data Subjects of this Agreement in Schedule 3

unless expressly indicated otherwise any inconsistency between the documents shall be resolved by reference to the priority set out above.

- 2.5 If there is any conflict between the Proposal and any other part of this Contract then such other part of the Contract will take precedence.
- 2.6 [Work on the Service has already commenced on the [DATE] as the parties hereby acknowledge and work carried out before the Commencement Date will be considered to be work carried out under this Contract. Unless earlier terminated in accordance with its terms this Contract shall continue until the Services have been performed and met in accordance with this Contract.]
- 2.7 The Consultant agrees that it will complete the Services fully in accordance with the timetable set out in Schedule [1] and in this respect time shall be of the essence.
- 2.8 Nothing in this Agreement 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 shall:
 - 3.1.1 promptly and efficiently 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 its best endeavours to promote the interests of the Council;
 - 3.1.3 ensure that the Services are undertaken by the relevant Consultant's Personnel to the standards and in the manner frequency quantity and times specified in this Contract and that in fulfilling its obligations under this Contract it will act fairly, avoid discrimination and promote equal opportunities;
 - 3.1.4 inform itself of the Council's stated requirements in respect of the Services; and
 - 3.1.5 consult regularly with the Council throughout the performance of the Services and promptly give to the Council all such information and reports as may from time to time require in connection with matters relating to the provision of the Services.
- 3.2 The Consultant warrants that it and the Consultant's Personnel have the qualifications, experience, and memberships (if any) as specified in the Proposals and in performing its duties under this Contract it will not, infringe the rights of, nor breach any of its obligations to any third party.

- 3.3 The Consultant shall use reasonable endeavours to ensure that it is available at all times on reasonable notice to provide such assistance or information as the Council may require.
- 3.4 Unless the Consultant has been specifically authorised to do so by the Council in writing, the Consultant shall not:
- 3.4.1 have any authority to incur any expenditure in the name of or for the account of the Council; or
 - 3.4.2 hold itself out as having authority to bind the Council.

[4. THE CONSULTANT'S PERSONNEL

- 4.1 Schedule 1 specifies the Consultant's Personnel employed to deliver the Services and the minimum requirements.
- 4.2 The Consultant shall not without the Council's prior written consent remove any of the Consultant's Personnel from the delivery of the Services nor amend the time they spend or what they spend it on.
- 4.3 The Consultant will not, without the Council's Consent:
- 4.3.1 allow the Consultant's Personnel to delegate any part of the services which they are expected to carry out; and
 - 4.3.2 allocate tasks not connected with the Services to any of the Consultant's Personnel engaged on the Services on a full time basis until completion of the Services allocated to that person.
- 4.4 If any of the Consultant's Personnel are not available to perform any of the Services allocated to them the Consultant shall immediately:
- 4.4.1 give notice to the Council of the circumstances; and
 - 4.4.2 if so requested by the Council, arrange for replacement of that person with a person who has a comparable professional qualifications, skills and experience to perform the Services ("the Substitute"), provided that the Substitute is satisfactory to the Council, enters into direct undertaking with the Council, including with regard to confidentiality and is appointed at no cost to the Council. For the avoidance of doubt, the Consultant will continue to be subject to all duties and obligations under this agreement for the duration of the appointment of the Substitute.
- 4.5 The Council may acting reasonably, give notice requiring the Consultant to remove Consultant's Personnel from working on the Services. The Consultant will at no cost to the Council promptly remove and replace the Consultant's Personnel referred to in the notice with a person satisfactory to the Council.
- [4.6 The Consultant shall ensure that where necessary for provision of the Services the Consultants Personnel shall be required to have a Current Check undertaken in accordance with the requirements of the Disclosure and Barring Service ("DBS").
- 4.7 A Current Check is deemed to be a check commissioned no more than 12 months before, the Consultant Personnel is employed or engaged in or in connection with the Services.

- 4.8 The Consultant shall ensure that in applying the guidelines issued by the DBS, the Consultant's Personnel providing the Services have a Current Check at a level appropriate to the role undertaken.]
- 4.9 The Council is a living wage foundation (Living Wage) accredited employer and the Consultant is required to pay all Consultant's Personnel the Living Wage pay rates as a minimum requirement.

5. CHARGES, TERMS OF PAYMENT AND EXPENSES

- 5.1 The Contract Price shall be in accordance with the Pricing Schedule (Schedule 2). [The Contract Price will be amended [from time to time or annually] to reflect increase or decreases in the costs of the Services indicated by the percentage increase or decrease in the Index provided that no change will be greater than [percentage] of the variation in the Contract Price in force as at the Commencement Date.
- 5.2 In consideration of and subject to the satisfactory performance of the Services, the Council shall pay the Consultant the Contract Price in accordance with the payment provisions of Schedule 2 provided that the Council has received a valid Invoice in accordance with this clause 5 and full and accurate information and documentation as required by Schedule 2.
- 5.3 Payment will be dependent upon satisfactory completion of the Services and production of the relevant Reports (draft and final) by the dates specified.
- 5.4 In addition to the Contract Price, the Council will pay to the Contractor such Value Added Tax (if any) as may be properly be chargeable at rates ruling at the time of the invoice.
- [5.5 The Council shall reimburse all reasonable expenses properly and necessarily incurred by the Consultant in providing the Services except that no such expenditure shall be reimbursed unless:
- 5.5.1 it has been notified to the Council and agreed by the Council in writing before it is incurred; and
- 5.5.2 receipts or other appropriate evidence of payment are produced to the Council evidencing that the amounts were actually incurred.]

OR

- [5.5 The Contract Charges are all inclusive and the Consultant is not entitled to claim expenses incurred in providing the Services.]
- 5.6 The Council reserves the right to withhold or set off payment against any amounts due to the Consultant or against amounts claimed under any invoice which is disputed. The Council shall, in each case notify the Contractor in writing of the reason for withholding payment.
- 5.7 Payment will be by way of electronic transmission direct to a nominated bank account. Payment by cheque will only be made in exceptional circumstances and by prior arrangement. The Contractor shall provide the name and address of its bank, the account name and number, the bank sort code and any other details, in whatever format the Authority may require. The Contractor must ensure they are able to submit all invoices electronically via XML, emailed PDF, or the Web Portal

- 5.8 The Consultant shall be solely responsible for payment of all income tax liabilities whatsoever and national insurance or similar contributions in relation to their employees.
- 5.9 For the avoidance of doubt, the Consultant will not be entitled to be paid for any part of the Services which the Authorised Officer has certified as not having been performed in accordance with this Contract
- 5.10 The Consultant shall submit to the Council an invoice which gives details of the Services provided and the amount of the Contracts Price payable (plus VAT, if applicable) under clauses 5.2 and 5.3 above once all the Services have been completed to the reasonable satisfaction of the Council and the Council will then pay in accordance with clause 6 below.
- 5.11 Where the Council commissions any Additional Services the Consultant shall be entitled to charge based on the hourly/day rates specified in the Proposal provided that:
- 5.11.1 if based on day rates where any such Additional Services take less than a day the charge shall be calculated on a pro rata basis (based on an 8 hour day); and
- 5.11.2 the Consultant shall not undertake any Additional Services (or otherwise be entitled to payment for work outside the scope of the Services) unless expressly instructed to do so in writing,
- 5.12 Expenses for Additional Services are only payable if and to the extent except that:
- 5.12.1 such expenses were agreed in writing by the Council at the time that the Additional Services were requested; and
- 5.12.2 receipts are produced to the Council evidencing that the amounts were actually incurred.
- 5.13 The Council may, without limiting any other right it may have, defer payment for any part of the Services which has not been performed to its satisfaction until the Authorised Officer has certified that the Services has been performed to the Council's satisfaction.
- 5.14 The Consultant shall allow the Council or any of its authorised servants to have free and real time access to all financial, managerial and cost information held by the Consultant relating to the Services

6. METHOD OF PAYMENT

- 6.1 The Council will not have any obligation to pay the Consultant for any part of the Services until the Council is in receipt of a valid invoice.
- 6.2 Upon receipt of an invoice the Council may require the Consultant to provide at no additional cost to the Council such additional information as the Council may reasonably require to assist the Council in determining whether or not an amount is payable.
- 6.3 The Council will make payment of a valid invoice no later than 30 days from the date on which the Council determines that the invoice is valid and undisputed.

- 6.4 For the purposes of this Clause 6 a valid invoice is an invoice that has been submitted to the Council in accordance with this Clause 6 and:
- 6.4.1 the amount claimed in the invoice is due for payment pursuant to this Contract;
 - 6.4.2 the amount claimed in the invoice is correctly calculated in accordance with this Contract;
 - 6.4.3 the invoice correctly identifies the Services performed;
 - 6.4.4 the invoice bears a valid official Council reference number;
 - 6.4.5 where Value Added Tax is payable this is shown separately as a net extra charge and a valid Vat invoice is provided; and
 - 6.4.6 the Council has received all additional information requested pursuant to clause 6.2 and is satisfied as to the amounts properly payable.
- 6.5 The invoice must be sent to the Authorised Officer within [14] days after the end of each calendar month.
- 6.6 If the Council has paid an invoiced amount to the Consultant and the Council later determines that it is not valid the Council will:
- 6.6.1 dispute the invoice and pay any amount owed to the Consultant on a correctly rendered invoice no later than 30 days from the date on which the Council determines that the invoice is valid and undisputed; or
 - 6.6.2 deduct any amount owed to the Council from the next invoiced payment or if no other payment is due to the Consultant pursuant to this Contract, recover the amount from the Consultant as a debt due to the Council
- 6.7 The Consultant shall be entitled to charge interest on any unpaid invoices at the rate of 1% per annum above the base rate of the Bank of England which the parties agree shall be a substantial remedy for the purposed of the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.8 For the avoidance of doubt, payment of money to the Consultant in respect of work shall not prevent the Council from later claiming that any of the Services were not properly performed in accordance with this Contract if the Council later determines that this is the case.
- 6.9 Any amounts recoverable from or payable by the Consultant to the Council may be set off or deducted from any amount due or which at any time thereafter may become due to the Consultant under this or any other agreement with the Council.

7. NO AGENCY OR EMPLOYMENT

- 7.1 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.

8. TAX INDEMNITY

- 8.1 The Consultant agrees and warrants that it bears sole responsibility for the payment of tax, national insurance contributions, liabilities, charges and duties relating to any payments or arrangements made under this Contract or in

relation to any payments made by the Consultant to its officers or employees in connection with the Contract.

- 8.2 The Consultant shall indemnify the Council against any liability, assessment or claim made by the HM Revenue and Customs or any other relevant authority arising out of the performance by the parties of their obligations under this Contract and any costs, expenses, penalty fine or interest incurred or payable by the Council or the Consultant.
- 8.3 Where the Consultant is liable to be taxed in the UK in respect of consideration received under this Contract, it shall at all times comply with all statutes and regulations relating to such taxes.

9. CONFLICT OF INTEREST (COI)

- 9.1 The Consultant warrants that, the Consultant, its employees, agents or sub-contractors have no potential or actual "COI" in the performance of this Contract and shall take all reasonable ensures to ensure that they do not engage in any activities which might result in a COI. The Consultant will immediately give notice of any COI to the Council and demonstrate measures to ensure the situation is managed to avoid any adverse effect.
- 9.2 If the Council is given notice of a COI pursuant to Clause 9.1 which is not effectively communicated or effectively managed by the Consultant, resulting in adverse consequences to the Council and/or the Services the Council may proceed in accordance with Clause 19 to terminate this Contract (notwithstanding any other remedy it may have under these terms and conditions or in Law).

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 This Contract does not affect or transfer rights over the pre-existing IPR of the Consultant or third parties but the Consultant grants, and will ensure that (where such material is incorporated into the Contract Material) relevant third parties grant to the Council an irrevocable, royalty-free, perpetual, non-exclusive licence with rights to grant sub-licences for the following:
- 10.2.1 to use reproduce and adapt the Contract Material for its own use;
10.2.2 to perform any other lawful act with respect to the Contract Material; and
10.2.3 to manufacture, sell, hire or otherwise exploit the Contract Material
- for any purpose as the Council sees fit.
- 10.3 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.
- 10.4 The Consultant will ensure that Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract.

- 10.5 Prior to commencing work in relation to the Contract Material, the Consultant will, if required by the Council, obtain from every person who may create IPR in the course of this Contract (whether an employee or otherwise), and provide to the Council, a written assignment from that person to the Council of any IPR which they generate pursuant to this Contract and which will vest in and be owned by the Council.
- 10.6 If any Contract Material is produced or reproduced in an electronic format, the Consultant must deliver it to the Council in a format approved in writing by the Council.
- 10.7 If any Contract Material is produced or reproduced in an electronic format or stored electronically, the Consultant must not store it on a foreign computer without keeping the current version of the Contract Material on separate media as may be specified and delivered to the Council forthwith on completion of that part of the Services to which that Contract Material relates. All such stored electronic material must be treated as confidential under the terms of the Contract.
- 10.8 The Consultant must not produce, reproduce or store Contract Material in such a way that it is mixed with, attached to or indistinguishable from, material that is not the subject of this Contract.
- 10.9 IPR in any Contract Material supplied to the Consultant by the Council for reproduction or guidance remain vested in the Council.
- 10.10 It is a condition of the Contract that the Services will not infringe any Intellectual Property Rights of any third party and 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, as a result of or in connection with any breach of this clause during the course of providing the Services.
- 10.11 The Consultant waives any moral rights in the Contract Material to which it is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patent Act 1988 and or any similar provisions of Law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such works or other materials infringes the Consultant's moral rights.
- 10.12 The Consultant undertakes, at any time either during or after the provision of the Services to execute all documents, make all applications, give all assistance and do all acts and things as required by the Council, to vest the IPR in, and to register them in, the name of the Council and to defend the Council against claims that works embodying IPR infringe third party rights, and otherwise to protect and maintain the IPR in the works.

11. CONTRACT MANAGEMENT

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

- 11.2 The Consultant will:
- 11.2.1 liaise with and report to the Authorised Officer;
 - 11.2.2 comply with the Council's Contract Procedure Rules; and
 - 11.2.3 attend meetings and briefings with the staff of the Council as reasonably required to complete the Services.
- 11.3 Reports by the Consultant to the Authorised Officer must be in writing.
- 11.4 Any instruction given to the Consultant that might result in an increase to the Contract Price must be confirmed in writing by the Authorised Officer.

12. CONFIDENTIALITY AND PUBLICITY

- 12.1 The Parties acknowledge that during the course of the Services they will have access to Confidential Information and have agreed to comply with this Clause 12.
- 12.2 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, except where it is contained in any submission to any other public body in response to an invitation to tender from that public body.
- 12.3 In respect of any Confidential Information it may receive from the disclosing party ("the Discloser"), the receiving party ("the Recipient") shall ensure that the Recipient and the Recipient's employees shall:
- 12.3.1 keep Confidential Information secret and strictly confidential;
 - 12.3.2 use Confidential Information for the purposes of performing this Contract, and for no other purpose without the prior written agreement of the Discloser; and
 - 12.3.3 not disclose Confidential Information to any person, except as permitted in Clause 12.7 below, without the prior written consent of the Discloser.
- 12.4 Nothing in this Clause 12 shall be deemed or construed to prevent the Recipient from disclosing Confidential Information relating to this Contract to its employees or sub-contractors on a strictly need-to-know basis.
- 12.5 Each Party shall immediately upon discovery notify the other Party of any unauthorised use or disclosure of Confidential Information and will co-operate in every reasonable way to help regain possession of the Confidential Information or to prevent its further unauthorised use.
- 12.6 The Consultant shall return or destroy all originals, copies, reproductions and summaries of Confidential Information as requested by the Council.
- 12.7 The provisions of this Clause 12 shall not apply to information:
- 12.7.1 which either Party can show was already known to it at the Commencement Date and which it did not receive in connection with this Contract;
 - 12.7.2 obtained by a third party who is lawfully authorised to disclose it;

- 12.7.3 which comes into the public domain other than as a result of breach by either Party of this Clause 12;
 - 12.7.4 or documents required to be disclosed by Law, or to any governmental or regulatory body, including any disclosure to enable a determination to be made under the Dispute Resolution Procedure;
 - 12.7.5 or documents disclosed to professional advisors for the purpose of taking advice; or
 - 12.7.6 the disclosure of which is required to ensure the compliance of the Council with the FOIA, the EIRs and/or any applicable guidance or codes of practice.
- 12.8 The Consultant shall indemnify the Council against all actions claims demands proceedings damages costs losses charges and expenses whatsoever brought against the Council and arising out of any breach by the Consultant of this Clause 12.
- 12.9 For the avoidance of doubt nothing in this clause shall prevent the Council from:
- 12.9.1 publishing details of this Contract and of the total contract price on its website; and/or
 - 12.9.2 releasing Confidential Information to its officers and/or elected members in the normal course of council business.

13. DATA PROTECTION

- 13.1 Where this Contract involves the Processing of any Personal Data then the following provision of this Clause 13 shall apply.
- 13.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Consultant is the Processor unless otherwise specified in Schedule 3 (Processing, Personal Data and Data Subjects). The only processing that the Consultant is authorised to do is listed in Schedule 3 and may not otherwise be determined by the Consultant.
- 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 operation 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 mechanism 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 as appropriate to protect against a Data Loss Event having taken 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 the Consultant's Personnel do not process Personal Data except in accordance with this Contract and the provisions in Schedule [3].
- 13.6 The Consultant shall take all reasonable steps to ensure the reliability and integrity of any Consultant Personnel who have access to the Personal Data and ensure that they:
 - 13.6.1 are aware of and comply with the Consultant's duties under this Clause 13;
 - 13.6.2 are subject to appropriate confidentiality undertakings with the Consultant or any Sub-processor;
 - 13.6.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Contract;
 - 13.6.4 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 EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - 13.6.5.1 the Council and the Consultant has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council which provide:
 - 13.6.5.1.1 the Data Subject has enforceable rights and effective legal remedies;
 - 13.6.5.1.2 the Consultant complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations);
 - 13.6.5.1.3 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
 - 13.6.5.1.4 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 Access Request (or purported Data Subject Access 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 the 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 by 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 Access Request within the relevant timescales set out in the 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 GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the 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 The Consultant shall designate a 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 as if it were the Consultant; 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 the 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. The Consultant notes and

acknowledges the FOIA and the respective Codes of Practice on the Discharge of Public Authorities' Functions under Part 1 of the FOIA and on Management of Records (which are issued under sections 45 and 46 of the FOIA respectively). The Consultant will act in accordance with the FOIA and these Codes of Practice (and any other applicable codes of practice or guidance notified to the Consultant from time to time) and the EIRs to the extent that they apply to the Consultant's performance under the Contract.

14.2 The Consultant agrees that:

14.2.1 the decision on whether any exemption applies to a request for disclosure of information is a decision solely for the Council; and

14.2.2 where the Council is managing a request, the Consultant shall co-operate with the Council and shall respond within five (5) working days of any request by the Council for any information pertaining to the request or for any other assistance in determining how to respond to a request for disclosure.

14.3 The Council will consult the Consultant in relation to any request for disclosure of the Consultant's Confidential Information in accordance with all applicable guidance.

14.4 The Consultant shall ensure that all information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

14.5 The Consultant acknowledges that the Council may be subject to governmental codes of practice or guidance relating to a transparency agenda, including the policy of publishing contracts and all other documents relating to public procurement activity, 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. LEGISLATIVE COMPLIANCE

15.1 The Consultant shall at all times comply with and ensure that any person engaged in the performance of its obligations under this Contract complies with all applicable Laws in force from time to time in England and Wales.

15.2 The Consultant shall comply with all Council policies, guidance, codes of practice and financial regulations relevant to the Services.

16. SUSPENSION OF SERVICES

16.1 The Council may require the Consultant to suspend the progress of the whole or any part of the Services.

16.2 The Council may require the Consultant to recommence work on all or any part of the suspended Services upon reasonable notice.

16.3 Where the Consultant is required to suspend Services pursuant to clause 16.1 any previously agreed completion dates will be reviewed and revised by the Council.

- 16.4 The Council will pay the Consultant for any work already completed up to the time of suspension of the Services. Payment shall be calculated by reference to the Payment Schedule and to progress. If the Consultant and the Council do not agree on the amount of reasonable compensation within thirty (30) days the matter will be referred for resolution pursuant to Clause 30.

17. VARIATION

- 17.1 The Council may by notice in writing require the Consultant to vary the Services in purpose, scope or timing.

- 17.2 Without limiting the generality of Clause 17.1 the Council may direct the Consultant to:

- 17.2.1 increase, decrease or omit any part of the Services;
- 17.2.2 change the character or content of any part of the Services;
- 17.2.3 change the direction or dimensions of any part of the Services; and/or
- 17.2.4 perform Additional Services.

- 17.3 The Consultant will not unreasonably withhold agreement to a variation. The Consultant must inform the Council if such a variation cannot be carried out due to technical, legal or ethical reasons.

- 17.4 The parties will negotiate in good faith a variation to the Services including any variation to payment and the dates for completion. If there is a failure to reach agreement the variation will be referred for resolution pursuant to Clause 30. Any work undertaken by the Consultant will be at the Consultant's risk until the Parties agree the variation in writing.

18. PAYMENT FOR REDUCED SERVICES

- 18.1 In the event of a reduction in the Services, the Council will pay the Consultant on a pro rated basis. Payment shall be calculated by reference to the Schedule 2 (Payment). If the parties are unable to agree on the amount to be paid within thirty (30) days the matter will be referred for resolution pursuant to Clause 30.
- 18.2 The Consultant will not be entitled to any increase in the Contract Price where there is a reduction in Services.
- 18.3 The Consultant will not be entitled to any compensation for loss of prospective profits.

19. TERMINATION

19A. NO FAULT TERMINATION

- 19A.1 Without prejudice to its other rights and powers under this Contract the Council may at its absolute discretion at any time decide that it wishes work under this Contract to cease and may give [a minimum of one month's notice] to the Consultant of this.
- 19A.2 Notice given under this clause shall not carry the implication that the Consultant has been in breach of its obligations under this agreement and the Council shall not be obliged to produce evidence of such default.

19B. TERMINATION FOR BREACH OF PROCUREMENT RULES

19B.1 If:

19B.1.1 there occurs one of the situations mentioned in paragraphs (a) (b) or (c) of regulation 73(1) of The Public Contracts Regulations 2015 (S.I. 2105 No.102); or

19B.1.2 (without prejudice to (i) above) the Council reasonably determines that this Contract was entered into in material breach of the Council's Contract Procedure Rules;

then (and in any such case) the Council may at its absolute discretion choose to (but shall not be forced to) give notice to the Consultant to terminate the Consultant's appointment under this Contract (which notice will have immediate effect).

19C MATTERS CONSEQUENTIAL ON TERMINATION UNDER CLAUSES 19A or 19B

19C.1 Where this Contract is terminated under Clause 19A or 19B, the Consultant shall be entitled to be paid for work undertaken on a pro rated basis up to the date of termination. Payment shall be calculated in accordance with clause 5.

19C.2 The Consultant shall not be entitled to any compensation in respect of such early termination.

20. DEFAULT OF THE CONSULTANT AND TERMINATION

20.1 Without prejudice to the provisions of clauses 19A, 19B, and 19C above, if the Consultant:

20.1.1 fails, refuses, abandons or neglects to comply in a material respect with any of the terms and conditions of this Contract;

20.1.2 commits a serious or repeated breach or non-observance to the required standard of any of the provisions of this agreement;

20.1.3 fails to comply with a direction of the Authorised Officer given in accordance with this Contract;

20.1.4 is in the reasonable opinion of the Council negligent or incompetent in the performance of the Services;

20.1.5 enters into any arrangement or proceedings for the purpose of bankruptcy insolvency administration or is placed under official management or receivership or has a county court administration order made against him under the County Court Act 1984;

20.1.6 is convicted of a criminal offence; or

20.1.7 commits any fraud or dishonesty or acts in any manner which in the opinion of the Council brings or is likely to bring the Council into disrepute or is materially adverse to the interests of the Council;

the Council may at its discretion terminate the Contract with immediate effect or suspend payments under this Contract and require the Consultant to show cause why the Contract should not be terminated.

20.2 If the Council suspends payments pursuant to Clause 20.1 the Council must:

20.2.1 give the Consultant notice of the suspension, specifying the reason; and

- 20.2.2 require the Consultant to show cause within 14 days of the notice why the Contract should not be terminated with immediate effect.
- 20.3 If the Consultant fails to show the justification within the period specified in the notice to the satisfaction of the Council the Council may terminate the Contract by notice to the Consultant as of the date specified in the notice.
- 20.4 Where the Council terminates the Contract under this Clause 20 and arranges for the provision of the Services by a third party the Council shall be entitled to set off or recover from the Consultant the costs incurred and any additional expenditure incurred by the Council throughout the remainder of the term of the Contract. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 20 no further payments shall be payable by the Council to the Consultant until the Council has established the final cost of making those other arrangements.
- 20.5 Any delay by the Council in exercising its rights to terminate in respect of any breach or default shall not constitute a waiver of its rights to terminate the Contract.
- [20.6 If a Brexit Trigger Event occurs, the impacted party may:
- 20.6.1 require the other party to negotiate in good faith an amendment to this agreement to alleviate the Brexit Trigger Event; and
- 20.6.2 if no such amendment is made to this agreement within 30 days, terminate this agreement by giving the other party not less than [PERIOD] and not more than [PERIOD] written notice. On termination under this clause, clause 26 shall apply.
- 20.7 **Brexit Trigger Event** means any of the following events occurring at any time after the UK ceases to be a Member State of the European Union:
- 20.7.1 an adverse impact on a party's ability to perform the agreement in accordance with its terms and the law;
- 20.7.2 an increase in the costs incurred by a party in performing the agreement of at least [NUMBER]% since the price for the [DEFINED TERM FOR SERVICES] was last agreed;
- 20.7.3 the price of the [DEFINED TERM FOR SERVICES] under this agreement is at least [NUMBER]% lower than the market value for similar products or services (an impact on the Supplier);
- 20.7.4 the price of the [DEFINED TERM FOR SERVICES] under this agreement exceeds the market value for similar products or services by at least [NUMBER]% (an impact on the Council).]

21. OBLIGATIONS ON EXPIRY OR TERMINATION

- 21.1 On expiry or termination of the Contract, the Consultant shall:
- 21.1.1 immediately deliver to the Council all Council Material, Property and original Confidential Information in its possession or under its control;
- 21.1.2 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 outside of the premises of the Consultant; and
- 21.1.3 cease to use the Contract Material and Intellectual Property.

22. ACCESS AND INFORMATION

- 22.1 The Consultant shall provide access at all reasonable times to the Council's auditors and their employees, agents or representatives and take such steps as they may reasonably request to inspect such documents as the Council considers necessary in connection with the Contract. Such persons shall be entitled to take copies of or extracts from such documents and accounts.

23. EQUAL OPPORTUNITIES

- 23.1 The Consultant shall not, and shall take all reasonable steps to ensure that its servants, employees or agents and all sub-contractors employed in the execution of this Contract shall not, discriminate against any person on the grounds of sex, race, disability, sexual orientation or religion, contrary to the provisions of the Equality Act 2010 and any other applicable legislation or regulations.
- 23.2 The Consultant shall:
- 23.2.1 have a written equal opportunities policy which shall be produced to the Council upon request;
 - 23.2.2 seek to eliminate all unlawful discrimination in relation to sex race age disability religion and sexual orientation in its employment and management practices and in the provision of the Services under this Contract in accordance with its equal opportunities policy;
 - 23.2.3 work with the Council as reasonably required throughout the term of this Contract to prevent unlawful discrimination and to promote equality in accordance with this clause 23 and to ensure that the delivery of the Services is achieved without discrimination on the grounds of sex race age disability sexual orientation or religion;
 - 23.2.4 on entering into any contract with a sub-contractor in relation to this Contract impose obligations upon the subcontractor to comply with clauses 23.1 to 23.2.3 above as if the subcontractor were in the position of the Consultant;
 - 23.2.5 provide to the Council, upon request, such evidence as the Council may require for the purposes of determining whether the Consultant has complied with clauses 23.1 to 23.2.3 above. In particular, the Consultant shall provide any evidence requested within such timescale as the Council may require, and must co-operate fully with the Council during the course of the Council's investigation of the Consultant's compliance with its duties under this clause 23; and
 - 23.2.6 inform the Council forthwith in writing should it become aware of any proceedings brought against it in connection with this Contract by any person for breach of the Equality Act 2010 or any other applicable legislation or regulations.

24. LIABILITY AND INDEMNITY

- 24.1 The Consultant shall be liable for and shall fully indemnify the Council in respect of any expense, liability, loss, damage, actions, claims demands or proceedings (including personal injury whether or not resulting in death) suffered by the Council, its officers, servants or agents or any third parties in respect of:

- 24.1.1 the unlawful, negligent or reckless acts or omissions of the Consultant or a Substitute in the course of the performance (or attempted or purported performance) of the Services
- 24.1.2 as a result of any breach by the Consultant of its obligations under this Contract,
- 24.1.3 any use made by the Council of the Services;
- 24.1.4 any representation, misrepresentation (whether innocent or negligent), statement or tortuous act or omission (including negligence) arising under or in connection with this Contract; and
- 24.1.5 any liabilities incurred by the Consultant on the Council's behalf which are not authorised under this contract.

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

- 24.2.1 death or personal injury caused by its negligence or that of its staff;
- 24.2.2 fraud or fraudulent misrepresentation by it or that of its staff;
- 24.2.3 any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982;
- 24.2.4 any claim under the indemnity in clause 8 ; or
- 24.2.5 any other matter which, by Law, may not be excluded or limited.

25 INSURANCE

25.1 The Consultant shall throughout the Contract period maintain in force policies of insurance with an insurance company of long-standing and good repute in respect of:

- [25.1.1 professional indemnity in the sum of £2 (two) million pounds (which policy shall be maintained throughout the Contract term and for a further 12 years thereafter);]
- 25.1.2 public liability in the sum of £5 (five) million pounds; and
- 25.1.3 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.

25.2 The Consultant shall on the written request of the Council from time to time allow the Council to inspect and/or provide the Council with copies of the policies.

25.3 The Consultant shall comply with all terms and conditions of the insurance policies at all times. If cover under the insurance policies shall lapse or not be renewed or be changed in any material way or if the Consultant is aware of any reason why the cover under the insurance policies may lapse or not be renewed or be changed in any material way, the Consultant shall notify the Council without delay.

26. BUSINESS CONTINUITY AND SUSTAINABILITY

26.1 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.

- 26.2 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.
- 26.3 The Consultant shall test the Business Continuity Plan on a regular basis.
- 26.4 Following each test, the Consultant shall:
- 26.4.1 send to the Council a written report summarising the results of the test; and
 - 26.4.2 promptly implement any actions or remedial measures which the Council considers to be necessary as a result of those tests.
- 26.5 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 26 shall take precedence over clause 36 (Force Majeure).
- 26.6 The Consultant shall use its best endeavours to mitigate the impact of an Emergency to continue to perform the Contract.
- 26.7 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.
- 26.8 Whilst the Business Continuity Plan is in force the Consultant shall take the following steps:
- 26.8.1 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;
 - 26.8.2 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;
 - 26.8.3 put in place measures to ensure continued payment to employees, suppliers and its sub-contractors; and
 - 26.8.4 the Consultant agrees that it shall not profit from the Emergency whilst the Business Continuity Plan is in force.
- 26.9 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:
- 26.9.1 provide relief to the Consultant by agreeing an extension of time for performance under the Contract; and/or

26.9.2 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.

26.2 The Consultant will comply with all relevant sustainability guidelines.

27. WAIVER AND SEVERABILITY

27.1 The failure or delay of a Party to exercise any right, privilege, power or remedy under or connected with this Contract shall not constitute a waiver of that right or remedy, either on that occasion, or as the right or remedy may arise in the future.

27.2 No waiver shall be effective unless it is communicated in writing and signed by or on behalf of each of the parties hereto.

27.3 If any provision of this Contract shall become or be declared by a Court or other tribunal of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability it shall be severed from the Contract and shall in no way impair or affect any other provision of this Contract all of which shall remain in full force and effect.

27.4 No deletion from, addition to, or variation of this Contract shall be valid or of any effect unless agreed in writing and signed by the parties.

28. ASSIGNMENT AND SUB-CONTRACTING

28.1 The Consultant shall not assign, transfer, charge, sub-contract or deal in any other manner with any or all of its rights and obligations under this Contract without the Council's prior consent in writing.

28.2 The Service Provider acknowledges that any such consent provided pursuant to Clause 28.1 shall be conditional on:

28.2.1 the Consultant only engaging such sub-contractors as are capable of providing the Services effectively to the equivalent standard or to a higher standard;

28.2.2 the Consultant obtaining representations, warranties and/or undertakings from the sub-contractors in favour of the Consultant, the Council and/or a third party as the Council deems appropriate;

28.2.4 the Sub-Contract containing equivalent provisions to the terms and conditions of this Contract.

28.3 Any consent given by the Council for the Consultant to subcontract:

28.3.1 will not operate as an authority to transfer responsibility to the Sub-contractor; and

28.3.2 will not relieve the Consultant from any of its liabilities or obligations under this Contract.

28.4 Without prejudice to the other provisions of this contract (and in particular the preceding sub-clauses of this Clause 28), any contract between the Consultant and any Sub-contractor must contain provisions that comply with the

requirements of regulation 113 (2) (c) of the Public Contracts Regulations 2015 (2015 S.I. No.102).

29. FURTHER ASSISTANCE

- 29.1 The Consultant shall 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.

30. DISPUTE RESOLUTION

- 30.1 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.
- 30.2 Any dispute not capable of resolution by the parties in accordance with Clause 30.1 shall be settled by either Party invoking the procedure in this Clause 30 to attempt to resolve the dispute.
- 30.3 The Party invoking this procedure shall send the other Party a notice ("Dispute Notice") referring the dispute to dispute resolution. The Dispute Notice shall be in writing and shall state the nature of the dispute, the Party's position on or view of it, any other facts or matters which the Party considers relevant to the dispute, and the Party's suggested solution.
- 30.4 Within ten Working Days of receipt of a Dispute Notice the other Party shall send the first Party its response to the Dispute Notice (a "Response Notice"). The Response Notice shall be in writing and shall state what parts of the Dispute Notice the responding Party agrees with, and, where there is disagreement what the responding Party's position is. It shall also include any other facts or matters, which the responding Party considers relevant to the dispute, and the responding Party's suggested solution.
- 30.5 Within five Working Days after the service of a Response Notice the parties shall meet and attempt to resolve the dispute. Such a meeting shall be:
- 30.5.1 face to face unless this is not reasonably possible;
 - 30.5.2 between representatives of the parties who have the necessary knowledge seniority and delegated authority to resolve the dispute;
 - 30.5.3 conducted in good faith by both parties; and
 - 30.5.4 conducted as far as possible on the basis of the Dispute Notice and the Response Notice.
- 30.6 Subject only to any legal obligations compelling disclosure, all proceedings under this procedure shall be confidential and all communications connected with any proceeding under this procedure shall be without prejudice wherever the content of the communication makes this possible.
- 30.7 If the parties cannot resolve a dispute under this procedure 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.

30.8 Neither Party shall commence any legal proceedings connected with this Contract until this dispute resolution procedure has been complied with and an attempt has been made to agree to alternative dispute resolution unless either:

30.8.1 it is necessary to begin legal proceedings immediately to protect any right or interest of the Party; or

30.8.2 the other Party has failed to comply promptly and fully with the provisions of this clause.

31. NON SOLICITATION

31.1 The Consultant agrees that for a period of one (1) year after termination of this Agreement the Consultant shall not:

31.1.1 divert or attempt to divert from the Council any business of any kind in which it is engaged, including, without limitation, the solicitation of or interference with any of its suppliers or customers, or

31.1.2 employ, solicit for employment, or recommend for employment any person employed by the Council during the Consultancy Period and for a period of one (1) year thereafter

32 CLAUSES TO SURVIVE TERMINATION

32.1 The provisions expressly set out in the following clauses will survive termination or expiration of this Contract:

32.1.1 Clause 10 (Intellectual Property Rights);

32.1.2 Clause 12 (Confidentiality and Publicity);

32.1.3 Clause 13 (Data Protection);

32.1.4 Clause 20 (Default of the Contract and Termination);

32.1.5 Clause 22 (Access and Information);

32.1.6 Clause 24 (Liability and Indemnity);

32.1.7 Clause 25 (Insurance);

32.1.8 Clause 29 (Further Assistance);

32.1.9 Clause 30 (Dispute Resolution); and

32.1.10 Clause 31 (Non-solicitation).

33. NOTICES

33.1 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.

33.2 Notices will be deemed to be served:

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

33.2.2 immediately if delivered personally;.

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

34. RIGHTS OF THIRD PARTIES

34.1 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. The application of any legislation giving to or conferring on third parties contractual or other rights in connection with the Contract shall be excluded.

35. BRIBERY CORRUPTION AND COLLUSION

- 35.1 The Council shall in addition to any other rights and remedies it may have under the Contract be entitled immediately to terminate this Contract and to recover from the Consultant the amount of any loss resulting from such termination if:
- 35.1.1 the Consultant shall have offered or given or agreed to give any person any gift or consideration of any kind as inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to this Contract or any other agreement with the Council;
 - 35.1.2 the like acts shall have been done by any person employed by the Consultant or acting on the Consultant's behalf (whether with or without the knowledge of the Consultant);
 - 35.1.3 in relation to any contract with the Council the Consultant or person employed by the Consultant or acting on the Consultant's behalf shall have 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;
 - 35.1.4 the Consultant has offered or paid or given or agreed to give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or failing to do or causing or having caused to be done or failed to be done in relation to any tender or proposed tender any act or thing of the sort described above; or
 - 35.1.5 the Consultant solicits any gratuity or tip or any other form of money token or reward or charge for any of the Services provided for in the Contract other than bona fide charges approved by the Council.

36. FORCE MAJEURE

- 36.1 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.
- 36.2 Any failure or delay by the Consultant in performing its obligations under the Contract which results from any failure or delay by an agent or Sub-Contractor shall be regarded as due to Force Majeure only if that agent or Sub-Contractor is itself impeded by Force Majeure from complying with an obligation to the Consultant.
- 36.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure delay on its part as described in clause 35.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

- 36.4 If an event of Force Majeure affects the Consultant's performance so that it is unable to provide the Services, the Council may direct the Consultant to procure the Services from a third party contractor in which case the Consultant will be liable for payment for the provision of those Services for as long as the delay in performance continues.

37. ENTIRE CONTRACT

- 37.1 This Contract contains the whole agreement between the parties in respect of the Services and supersedes any prior written or oral agreement between them relating to it.
- 37.2 The Consultant acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) by the Council that is not set out in the Contract documents..

38. GOVERNING LAW AND JURISDICTION

- 38.1 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.

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/or Brief 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 [to be completed below]

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 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 /. /15 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*
- b.

6. **Final report:** provide to WCC final report by .../.../15 as above, reviewed following WCC comments

7. **Members Presentation:** Date to be confirmed?

8. **Final report:** (Timetable Date/0../15) 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 expenses are 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 6.4

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

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
Subject matter of the processing	
Duration of the processing	
Nature and purposes of the processing	
Type of Personal Data	
Categories of Data Subject	
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	