**Consultant/Specialist/ Advisor Agreement**

**THIS AGREEMENT** is made the [ ] day of [ ] 2020

**BETWEEN**

**CAMDEN LEARNING LIMITED,** 11th Floor**,** 5 Pancras Square, London N1C 4AG (hereinafter referred to as "**the Company**")

and

**[ ]** a limited liability company /partnership whose registered offices are situated at [ ]

(hereinafter referred to as "**the Consultant** ").

**WHEREAS**

1. The Company wishes to commission the Project as more specifically described in Schedule 1 hereto.
2. The Company has invited the Consultant to submit a quote or tender for the Project.
3. The Consultant has represented that it has the requisite expertise to carry out such Project and has in accordance with the Company’s requirements submitted proposals for carrying out the Project and a statement of the sum which it will require for carrying out and completing the Project in accordance with the Conditions hereinafter mentioned.
4. The Company has examined the Consultant’s tender submission and being satisfied that it appears to meet the Company’s requirements has accepted the Consultant’s tender subject to the Conditions as hereinafter referred to.

**NOW IT IS HEREBY AGREED** as follows:

1. **The Project**

* 1. The Consultant shall carry out the Project in accordance with the terms of this Contract and the specification set out in Schedule 1 ("**the Project**").
  2. In carrying out the Project the Consultant shall exercise the diligence skill and care to be expected of experts skilled in the carrying out of such projects.

2. **The Programme**

* 1. The Consultant shall carry out the Project regularly and diligently and in accordance with the Programme contained in Schedule 2 ("**the Programme**").

And /or

3. **The Report**

On the date stated in the Programme for completion of the Project the Consultant shall deliver to the Company 6 bound copies of the Final Report ("**the Report**").

4. **Consultant’ Staff, Assignment and Sub-Contracting**

* 1. The Company shall be entitled to assign the benefit of the Contract or any part of it and shall give written notice of any assignment to the Consultant.
  2. The Consultant shall not sub-contract or transfer, assign, charge or otherwise dispose of the Contract or any part of it (excepting only the assignment of any undisputed debt due under the Contract of which assignment, and the date on which the assignment became effective, the Contractor has previously notified the Company) without the previous written consent of the Company.
     1. The Contractor shall ensure that any sub-contractor complies with all applicable provisions of the Contract. Any sub-contract shall not relieve the Contractor of its obligations under the Contract.
     2. The Contractor shall include a term in the Contract with the sub-contractor that payment to the sub-contractor shall be made within 30 days of receipt of a valid invoice.

**5. Obligations of the Company**

5.1 The Company will provide to the Consultant at the times specified in the Programme or where not so specified at such times as will enable the Consultant to comply with the Programme:

5.1.1 the opportunity to discuss freely with the personnel employed by the Company whom the Consultant reasonably requires too interview, to carry out the Project and prepare the Report;

5.1.2. reasonable access to the Company’s premises provided that the Consultant's personnel shall comply with any security or safety provisions in force at such premises;

5.2 The Company shall appoint a key contact person, for providing the Consultant with a channel of communication with the Company and to whom the Consultant can refer any difficulties which may arise as between the Company and the Consultant in the carrying out of the Project.

6. **Contract Price**

* 1. The Company shall pay to the Consultant the Contract Price set out in Schedule 3.

7. **Payment**

* 1. The Consultant shall be paid within 30 days of the receipt by the Company of an invoice from the Consultant.
  2. The Consultant shall provide such evidence in support of its invoice as the Company may reasonably require.

1. **Variations** 
   1. The Company may request a variation to the Project provided that such variation does not amount to a material change to the Project (“**Variation**”).
   2. The Company may request a Variation by notifying the Consultant in writing of
      1. the Variation and giving the Consultant sufficient information to assess the extent of the Variation;
      2. whether any change to the Contract Price is required in order to implement the Variation; and
      3. a time limit within which the Consultant shall respond to the request for a Variation and such time limits shall be reasonable having regard to the nature of the Variation.
   3. If the Consultant accepts the Variation, it shall confirm the same in writing.
   4. If the Consultant is unable to accept the Variation to the Project or where the Parties are unable to agree a change to the Contract Price, the Company may:
      1. Allow the Consultant to fulfil its obligations under the Contract without the variation to the Project; or
      2. Terminate the Contract with immediate effect, except where the Consultant has already delivered all or part of the Project, or where the Consultant can show evidence of substantial work being carried out to fulfil the requirements of the Project, and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, that matter shall be dealt with under the Dispute Resolution Procedure detailed within clause 15.
2. **Confidentiality** 
   1. Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by [clause](http://commercial.practicallaw.com/2-107-3829#a955312#a955312)9.2.
   2. Each party may disclose the other party’s confidential information:
      1. to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party’s obligations under this Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party’s confidential information comply with this [clause](http://commercial.practicallaw.com/2-107-3829#a737881#a737881) 9; and
      2. as may be required by law, court order or any governmental or regulatory authority.
   3. No party shall use any other party’s confidential information for any purpose other than to perform its obligations under this Contract.
3. **Intellectual Property Rights**
   1. The Company shall be entitled to all property, copyright and all other intellectual property rights, including but without limitation the database rights in any database (“the Intellectual Property Rights”) in the materials developed, originated, written or prepared by the Consultant or any employee, agent or contractor of the Consultant (whether individually or jointly with the Council, which Intellectual Property Rights the Consultant by this agreement assigns to the Company with full title guarantee.
   2. At the request of the Company the Consultant shall do all such things and sign all documents or instruments reasonably necessary in the Company’s opinion to enable the Company to obtain, defend and enforce its Intellectual Property Rights in such materials.
   3. The Consultant warrants that the materials will (so far as they do not comprise material originating from the Company) be original works of authorship and the use or possession by the Company will not subject the Company to any claim for infringement of any proprietary rights of any third party.
   4. The Consultant agrees to indemnify the Company against any, and all claims, liability, loss, damages, costs and expenses, which the Company may incur or suffer because of a breach by the Consultant of the warranties set out in this clause.

**11**. **Liability and Indemnity**

11.1 The Consultant shall be liable for and shall indemnify the Company against any loss expense liability claim or proceeding whatsoever arising under any statute or at common law in respect of personal injury to or the death of any person whomsoever and damage whatsoever to any property real or personal arising directly or indirectly out of any wilful or negligent act or omission of the Consultant its employees agents or sub-contractors in the course of or in connection with the carrying out of the Project.

11.2 The foregoing indemnity shall remain in full force and effect notwithstanding any termination of this Contract.

**12. Insurance**

12.1 The Consultant shall take out and maintain with a reputable insurance company insurance against all loss of or damage to property or injury to or death of persons arising out of or in consequence of its obligations under this Contract and against all actions, claims, proceedings demands, costs and expenses in respect thereof for the following amounts:

12.1.1 Professional Indemnity insurance to a value of not less than £2m.

12.1.2 Public Liability insurance to a value of not less than £2m.

12.2 The Consultant shall before the commencement of the Contract and thereafter upon request produce to the Company evidence of the policies effecting the insurances referred to in clause 12.1 above together with documented evidence that such insurances are properly maintained.

**13.** **Termination**

13.1 The Company shall be entitled at any time and for any reason to terminate the Contract by giving 10 days’ notice in writing to the Consultant. Provided that such termination is not due to any default by the Consultant the Company shall pay the Consultant:

13.1.1 for any work performed up to the date of the issue of the notice of termination; and

13.1.2 for any commitments, liabilities or expenditure properly and reasonably entered into by the Consultant for the performance of the Contract to the extent to which the same would otherwise represent an unavoidable loss to the Consultant because of the termination of the Contract.

13.2 If the Consultant shall be in breach of any of its obligations under the Contract the Company shall be entitled to give the Consultant notice in writing forthwith to remedy such breach.

13.3 If the Consultant shall fail to remedy such breach within 7 days of the receipt of such notice or such longer period as the Company may allow having regard to the nature of the breach the Company may forthwith terminate the Contract.

13.4 Upon such termination the Company shall be entitled to have the work unperformed by the Consultant performed by others and to recover from the Consultant the amount by which the costs incurred by the Company in completing the Contract exceed the sums due to the Consultant in respect of work properly performed by them up to the date of termination. On such termination the Consultant shall hand over to the Company all working papers which it has prepared in connection with the Project.

**14**. **Bankruptcy and Liquidation**

If the Consultant become bankrupt or insolvent or has a receiving order made against it or compounds with its creditors or being a corporation commences to be wound up (not being a member's voluntary winding up for the purposes of amalgamation or reconstruction) or has an administration order made against it or carries on its business under an administrator, a receiver a manager or liquidator for the benefit of their creditors or any of them, the Company shall be entitled forthwith to terminate the Contract by notice to the Consultant or to any person in whom the Contract has become vested.

**15.** **Disputes**

15.1 If any disputes or difference shall arise between the parties out of or in connection with this Contract then either party may give the other 7 days' notice in writing to resolve the dispute or difference through an Alternative Dispute Resolution (ADR) Procedure.

15.2 If the matter has not been resolved by the ADR procedure within 28 days of such notice having been received or if the other party will not participate in an ADR procedure then either party may commence legal proceedings to have the dispute resolved.

**16. FOI**

16.1 The Company is subject to the provisions of the Freedom of Information Act 2000 (“the FOIA”). As such the Consultant acknowledges that the Company may be obliged to disclose information relating to this Contract and shall not be liable to the Consultant or any other person for any loss suffered as a result of a bona fide disclosure of information under the FOIA. More particularly:

16.1.1 upon receipt of a request for information the Company shall, wherever possible, consult with the Consultant and take into account its views on disclosure and the applicability of any exemptions;

16.1.2 the Consultant shall not respond directly to a request for information under FOIA and shall instead pass any request to the Company within two (2) Working Days of receipt; and

16.1.3 the Consultant shall and shall procure that its sub-consultants shall:

* + 1. provide the Company with a copy of all information in its possession or power in a form that the Company requires within five (5) Working Days of request at no cost to the Company; and
    2. provide all necessary assistance as reasonably requested by the Company to respond to a request for information within the time for compliance set out in FOIA or any other similar legislation, regulations guidelines or codes of practice.

16.2 The Parties shall comply with the provisions of the Data Protection Act 1998 so far as applicable to this Contract and the Project and shall indemnify each other against all actions, costs, expenses claims, proceedings and demands which may be brought against the other party for breach of statutory duty under this Act which arises from the use, disclosure or transfer of personal data by the other Party or its servants or agents.

**17. DATA PROTECTION**

17.1 The Contractor shall (and shall procure that any of its Staff involved in the provision of the Contract) comply with the Data Protection Legislation and both parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with the Contract.

17.2. The Contractor shall obtain an appropriate accreditation certificate as may be directed by the Company, to demonstrate such compliance with Data Protection Legislation.

17.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Company is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in the Schedule of Processing, Personal Data and Data Subjects by the Company and may not be determined by the Contractor.

17.4 The Contractor shall notify the Company immediately if it considers that any of the Company’s instructions infringe the Data Protection Legislation.

17.5 The Contractor shall provide all reasonable assistance to the Company in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Company, include:

1. a systematic description of the envisaged processing operations and the purpose of the processing;
2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
3. an assessment of the risks to the rights and freedoms of Data Subjects; and
4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

17.6 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

1. Process that Personal Data only in accordance with the Schedule of Processing, Personal Data and Data Subjects, unless the Contractor is required to do otherwise by Law. If it is so required, the Contractor shall promptly notify the Company before processing the Personal Data unless prohibited by Law;
2. ensure it does not knowingly or negligently do or omit to do anything which places the Contractor or the Company in breach of the Company’s obligations under the Data Protection Legislation;
3. ensure that it has in place Protective Measures to protect against:
4. unauthorised or unlawful processing of Personal Data;
5. accidental loss or destruction of, or damage to, Personal Data,
6. and such measures to be reviewed and approved by the Company as appropriate to protect against a Data Loss Event having taken account of the:
7. nature of the data to be protected;
8. harm that might result from a Data Loss Event;
9. state of technological development; and
10. cost of implementing any measures;
11. ensure the Personal Data is kept and stored securely in accordance with any reasonable requirements of the Company;
12. ensure that the Staff do not process Personal Data except in accordance with this Agreement (and the Schedule of Processing, Personal Data and Data Subjects);
13. it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
14. are aware of and comply with the Contractor’s duties under this Condition;
15. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
16. 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 Company or as otherwise permitted by this Agreement; and
17. have undergone adequate training in the use, care, protection and handling of Personal Data;
18. not transfer Personal Data outside of the EU unless the prior written consent of the Company has been obtained and the following conditions are fulfilled:
19. the Company or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Company;
20. the Data Subject has enforceable rights and effective legal remedies;
21. the Contractor 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 Company in meeting its obligations); and
22. the Contractor complies with any reasonable instructions notified to it in advance by the Company with respect to the processing of the Personal Data; and at the written direction of the Company, securely destroy or return Personal Data (and any copies of it) to the Company on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

17.8. Subject to the Conditions of these clauses, the Contractor shall notify the Company immediately if it:

1. is in breach of the Protective Measures required to be put in place pursuant to Condition above);
2. receives a Data Subject Access Request (or purported Data Subject Access Request);
3. receives a request to rectify, block or erase any Personal Data;
4. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
5. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
6. 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
7. becomes aware of a Data Loss Event, and without undue delay and in any event within 24 hours, the Contractor shall notify the Company, by:
8. contacting the Authorised Officer; and
9. emailing the Company’s Date Protection Officer via the [dpa@camden.gov.uk](mailto:dpa@camden.gov.uk) to inform them of the Data Loss Event, including in its notification to the Company:
   * 1. a description of the Data Loss Event including where possible, the categories and approximate number of Data Subjects concerned, and the categories and approximate number of data records concerned; and
     2. a description of the measures that the Contractor has taken or proposes to take to address the Data Loss Event, including, where appropriate, measures to mitigate its possible adverse effects

17.9 Following the Contractor’s notification of a Data Loss Event under this Condition, the Contractor shall immediately assess the risks and consequences of the Data Loss Event and take measures, including:

to mitigate the possible adverse effects of the Data Loss Event; and

to protect the data and the interests/safety of the Data Subject and/or Data Controller, and

inform the Company as to the measures that it has taken.

The Contractor’s obligation to notify under Condition [1.7] shall include the provision of further information to the Company in phases, as details become available.

17.10 Considering the nature of the processing, the Contractor shall provide the Company with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under these Conditions (and insofar as possible within the timescales reasonably required by the Company) including by promptly providing:

* 1. the Company with full details and copies of the complaint, communication or request;
  2. such assistance as is reasonably requested by the Company to enable the Company to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  3. the Company, at its request, with any Personal Data it holds in relation to a Data Subject;
  4. assistance as requested by the Company following any Data Loss Event;
  5. assistance as requested by the Company with respect to any request from the Information Commissioner’s Office, or any consultation by the Company with the Information Commissioner's Office.

The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this Condition. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

1. the Company determines that the processing is not occasional;
2. the Company 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
3. the Company determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

17.11 The Contractor shall provide the Company with such information as the Company may reasonably require satisfying itself that the Contractor is complying with its obligations under the Data Protection Legislation, in relation to this Contract.

17.12 The Contractor shall allow for audits of its data processing activity by the Company or the Council’s designated auditor, in accordance with the Contract’s Audit Condition to inspect and audit, the Contractor's data processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Company to enable the Company to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract and Data Protection Legislation.

17.13 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.

17.14 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:

1. notify the Company in writing of the intended Sub-processor and processing;
2. obtain the written consent of the Company;
3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Condition such that they apply to the Sub-processor; and
4. provide the Company with such information regarding the Sub-processor as the Company may reasonably require.

The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

17.15 The Contractor shall indemnify and keep indemnified the Company against all actions, claims, demands, proceedings, damages, costs, losses, charges and expenses whatsoever in respect of any breach by the Contractor or its Staff of this Condition, including but not limited to any fine imposed by the Information Commissioner’s Office upon the Company for a Data Loss Event caused by the Contractor, its Staff and any appointed Sub-processors.

17.16 The Contractor may, at any time on not less than 30 Working Days’ notice, revise this Condition by replacing it with any applicable controller to processor standard Conditions or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by variation to this Contract, subject to the Council’s prior written agreement).

17.17 The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Company may on not less than 30 Working Days’ notice to the Contractor amend this Contract to ensure that it complies with any guidance.

17.18 The provisions of this Condition shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

**18. Warranty Period (if applicable)**

18.1 Warranty Period of 60 days from receipt of payment to

resolve programming errors and defects in design, manufacture or

materials throughout the applicable warranty period.

**19**. **Law**

19.1 The Parties accept the exclusive jurisdiction of the English Courts and agree that the Contract, and all non-contractual obligations and other matters arising from or connected with the Contract, are to be governed and construed according to English Law.

IN WITNESS of which the parties hereto have hereunto set their respective hands the day and year first above written

**SIGNED** FOR AND ON BEHALF OF

**OF CAMDEN LEARNING LIMITED**

........................................................ *(Sign).*

………………………………………. *(Name)*

**Chairman**

........................................................ *(Sign).*

………………………………………. *(Name)*

Managing Director

**SIGNED BY** FOR AND ON BEHALF

OF THE CONSULTANTS

........................................................ *(Sign).*

………………………………………. *(Name)*

*Director*

........................................................ *(Sign).*

………………………………………. *(Name)*

*Director/Secretary*

**THE SCHEDULES**

**SCHEDULE 1 —THE PROJECT**

S1.1. The Project is Camden Post-16 Education Strategy Project

**SCHEDULE 2 — THE PROGRAMME**

S2.1 The Consultant will be required to focus in 4 key areas and a report, with outputs such as papers or slide-decks produced to support activity and thinking:

1. Undertaking research on performance

A review of 16-19 performance in Camden, benchmarked against London and the national picture. The review will present a data analysis but will also highlight key issues for consideration throughout the project.

2. Identifying priorities and issues in the current landscape of 16-19 education, with a focus on vocational and technical education

• T Levels;

• Apprenticeships;

• Funding; and

• Further Education White Paper.

3. Identifying for the Company models of interesting and potentially relevant practice locally, nationally and even internationally.

It is important that this is more than a literature review which is why we would want the lead for the project to have expertise and immediate credibility in this area.

There has been some discussion locally of the concept of a Camden campus for post-16 education. The Company wants the Consultant also to consider what that might look like in practice and its viability.

4. Raising awareness locally of the issues, the need for change and the possibilities. The Company envisage the Consultant would organise individual meetings with the leaders of schools, Capital City College Group, local councillors, some employers, the GLA and others you consider would contribute well to this project.

We would also want you to plan a series of roundtables bringing people together locally but also using others from across London and external experts to support debate.

There may be additional ways by which you would want to raise awareness.

5. Producing a short report

We would expect a report will be prepared by January 2021:

• pulling together the relevant issues, but signposting rather than reproducing the underpinning papers or slide-decks produced throughout the project

• setting out the options for strategic change

• indicating ways in which change might be managed to implement a new strategy for post-16 education in Camden.

**SCHEDULE 3 — PAYMENT PRICING**

**Price**

|  |  |
| --- | --- |
|  | |
| Pricing template | |
| Supplier name: |  |
| Total Price excl VAT (The requirement will be based in the Camden area, no expense’s will be paid) | £ |

**SCHEDULE 4 – Processing, Personal Data and Data Subjects (This Schedule is in draft format to be finalised with the winning bidder following award of contract)**

1. This Schedule lists the only processing that the Contractor is authorised to do

by the Company.

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

|  |  |
| --- | --- |
| **Description** | **Details** |
| Data Protection Officer contact details | [Provide name and contact details (phone and email) of the DPO] |
| Subject matter of the processing | [This should be a high level, short description of what the processing is about i.e. its subject matter] |
| Duration of the processing | [Clearly set out the duration of the processing including dates] |
| Nature and purposes of the processing | [Please be as specific as possible, but make sure that you cover all intended purposes.  The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction,erasure or destruction of data (whether or not by automated means) etc.  The purpose might include: employment processing, statutory obligation, recruitment assessment etc]  Type of Personal Data [Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc] |
| Categories of Data Subject | [Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc] |
| 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 | [Describe how long the data will be retained for, how it be returned or destroyed] |