

**DATED**

**[dd/mm/yyyy]**

## **CONSULTANCY AGREEMENT**

**between**

**PENZANCE COUNCIL**

**and**

**[SUPPLIER]**

## CONTENTS

---

### CLAUSE

1.	Interpretation.....	1
2.	Term of engagement.....	3
3.	Duties and obligations .....	3
4.	Fees.....	5
5.	Expenses .....	6
6.	Other activities.....	6
7.	Confidential information.....	6
8.	Data protection .....	7
9.	Intellectual property.....	7
10.	Insurance and liability .....	9
11.	Termination .....	10
12.	Obligations on termination.....	11
13.	Status .....	12
14.	<b>Freedom of information</b> .....	13
15.	<b>Equalities and Diversity</b> .....	13
16.	Notices .....	14
17.	Entire agreement.....	14
18.	Variation .....	15
19.	Counterparts .....	15
20.	Third party rights .....	15
21.	Governing law and jurisdiction.....	15

### SCHEDULE

SCHEDULE SERVICES.....	177
------------------------	-----

Parties

- (1) Penzance Council, Penlee Centre Penlee Park, Penzance TR18 4HE (**the Council**).
- (2) [Supplier] incorporated and registered in England and Wales with Company Number [ADD] whose registered office is at [ADD] (**Consultant Company**)

**AGREED TERMS**

**1. INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement (unless the context requires otherwise).

**Opportunities:** any opportunities which the Consultant Company or the Individual becomes aware of during the Engagement which relate to the functions of the Council and which the Council reasonably considers might be to its benefit.

**Capacity:** as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

**Commencement Date:** [dd/mmyyyy]

**Council Property:** all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the functions or affairs of the Council or its customers and contacts, and any equipment, keys, hardware or software provided for the Consultant Company or the Individual's use by the Council during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Consultant Company or the Individual's on the Council, the Consultant Company or the Individual's computer systems or other electronic equipment during the Engagement.

**Confidential Information:** information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the functions operations. business, customers, products, affairs and finances of the Council for the time being confidential to the Council and trade secrets including, without limitation, technical data and know-how relating to the functions of the Council or any of its suppliers, customers, agents, distributors, management or business contacts, including in particular (by way of illustration only and without limitation) and including (but not limited to) information that the Consultant Company or the Individual creates, develops, receives or obtains in connection with his Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

**Engagement:** the engagement of the Consultant Company by the Council on the terms of this Agreement.

**Data Protection Legislation:** (i) the Data Protection Act 1998 until the GDPR is directly applicable, (ii) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

**Individual:** [Add] or suitably agreed person in agreement with Council.

**Insurance Policies:** Employer's liability, commercial general liability insurance cover, professional indemnity insurance cover, and public liability insurance cover.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

**Invention:** any invention, idea, discovery, development, improvement or innovation made by the Consultant Company or the Individual in the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

**Pre-Contractual Statement:** any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the Engagement other than as expressly set out in this agreement.

**Services:** the services provided by the Consultant in a consultancy capacity for the Council as more particularly described in the 0.

**Termination Date:** the date of termination of this agreement, howsoever arising.

**Works:** all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Consultant Company or the Individual in the provision of the Services.

**Working Day:** 8 hours per chargeable day

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

- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.6 The Schedule to this agreement forms part of (and is incorporated into) this agreement.

## **2. TERM OF ENGAGEMENT**

- 2.1 The Council shall engage the Consultant Company and the Consultant Company to undertake Services as described in the Contract and / or supporting documents. The Consultant Company shall make available to the Council the Individual to provide the Services on the terms of this agreement.
- 2.2 The Engagement shall commence on the Commencement Date and shall continue for a period up to [ADD] (and including) the date hereof unless and until terminated:
- (a) as provided by the terms of this agreement; or
  - (b) by either party giving to the other not less than 1 month's prior written notice.

## **3. DUTIES AND OBLIGATIONS**

- 3.1 During the Engagement the Consultant Company shall, and (where appropriate) shall procure that the Individual shall:
- (a) provide the Services for Business and Organisational Consultancy Support;
  - (b) provide the Services with all due care, skill and ability and use best endeavours to promote the interests of the Council; and
  - (c) promptly give to the Council all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services
- 3.2 If any Individual is unable to provide the Services due to illness or injury, the Consultant Company shall advise the Council of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in

accordance with clause 4 in respect of any period during which the Services are not provided. In agreement with the Client the Consulting Company reserves the right to substitute the Individual to perform the required Services as may be necessary from time to time.

- 3.3 The Consultant Company shall use reasonable endeavours to ensure that he is available at all times on reasonable notice to provide such assistance or information as the Council may require.
- 3.4 Unless specifically authorised to do so by the Council in writing:
- (a) neither the Consultant Company nor the Individual shall have any authority to incur any expenditure in the name of or for the account of the Council; and
  - (b) the Consultant Company shall not, and shall procure that the Individual shall not, hold itself out as having authority to bind the Council.
- 3.5 The Consultant Company shall (and shall procure that the Individual shall) comply with all reasonable standards of safety and comply with the Council's health and safety procedures from time to time in force at the premises where the Services are provided and report to the Council any unsafe working conditions or practices.
- 3.6 The Consultant Company shall and shall procure that the Individual shall comply with the Council's procedures and policies.
- 3.7 The Consultant Company undertakes to the Council that during the Engagement it shall procure that the Individual shall take all reasonable steps to offer (or cause to be offered) to the Council any Opportunities as soon as practicable after the same shall have come to its or his knowledge and in any event before the same shall have been offered by the Consultant Company or the Individual (or caused by the Consultant Company or the Individual to be offered) to any other party provided that nothing in this clause shall require the Consultant Company or the Individual to disclose any Business Opportunities to the Council if to do so would result in a breach by the Consultant Company or the Individual of any obligation of confidentiality or of any fiduciary duty owed by the Consultant Company or the Individual to any third party.
- 3.8 The Consultant Company may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that:
- (a) the Council will not be liable to bear the cost of such functions; and

- (b) at the Council's request the third party shall be required to enter into direct undertakings with the Council, including with regard to confidentiality.

3.9 The Consultant Company shall, and shall procure that the Individual shall:

- (a) comply with all statutory requirements imposed on the Council;
- (b) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- (c) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (d) promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Consultant Company or the Individual in connection with the performance of this agreement;
- (e) ensure that all persons associated with the Consultant Company or other persons who are performing services in connection with this agreement comply with this clause; and
- (f) The Consultant Company shall provide such supporting evidence of compliance as the Council may reasonably request.

3.10 Breach of clause 3.9 shall be deemed a material breach of this agreement.

#### **4. FEES**

4.1 The Council shall pay the Consultant Company a fee of as set out in the Consultant Companies Tender (see Price Schedule) exclusive of VAT. Payment is only to be made on completion of signed off Milestones as agreed in advance with the Council.

4.2 All amounts payable by the Council under this Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under this Contract by the Consultant Company to the Council, the Council shall, on receipt of a valid VAT invoice from the Consultant Company, pay to the Consultant Company such additional amounts in respect of VAT as are chargeable on the supply of Services at the same time as payment is due for the supply of the Services

4.3 In consideration of the provision of the Services during the Engagement, the Council shall pay each invoice submitted by the Consultant Company in accordance with clause 4.1 within 28 days of receipt.

- 4.4 The Council shall be entitled to deduct from the fees (and any other sums) due to the Consultant Company any sums that the Consultant Company may owe to the Council at any time.
- 4.5 Payment in full or in part of the fees claimed under clause 4 or any expenses claimed under clause 5 shall be without prejudice to any claims or rights of the Council against the Consultant Company in respect of the provision of the Services.

## **5. EXPENSES**

- 5.1 The Consultant Company and/or the Individual shall bear their own expenses incurred in the course of the Engagement except where otherwise agreed beforehand in writing with the Council.
- 5.2 If the Consultant Company and / or the Individual is required to travel abroad in the course of the Engagement, the Consultant Company shall be responsible for any necessary insurances, inoculations and immigration requirements.

## **6. OTHER ACTIVITIES**

Nothing in this agreement shall prevent the Consultant Company or the Individual from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that:

- (a) such activity does not cause a breach of any of the Consultant Company's obligations under this agreement;
- (b) the Consultant Company shall not and shall procure that the Individual shall not engage in any such activity if it relates to an operation which is similar to the functions of the Council without the prior written consent of the Council; and
- (c) the Consultant Company shall give priority to the provision of the Services to the Council over any other business activities undertaken during the course of the Engagement.

## **7. CONFIDENTIAL INFORMATION**

- 7.1 The Consultant Company acknowledges that in the course of the Engagement it and the Individual will have access to Confidential Information. The Consultant Company has therefore agreed to accept the restrictions in this clause 7.



- 7.2 The Consultant Company shall not and shall procure that the Individual shall not (except in the proper course of his duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use his best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:
- (a) any use or disclosure authorised by the Council or required by law; or
  - (b) any information which is already in, or comes into, the public domain otherwise than through the Consultant Company's or the Individual's unauthorised disclosure.
- 7.3 At any stage during the Engagement, the Consultant Company will promptly on request return all and any Council Property in its or the Individual's his possession to the Council.

## **8. DATA PROTECTION**

- 8.1 The Consultant Company shall procure that the Individual consents to the Council holding and processing data relating to this Contract for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the Data Protection Legislation) relating to the Individual's including, as appropriate:
- (a) information about the Individual's physical or mental health or condition in order to monitor sickness absence;
  - (b) the Individual's racial or ethnic origin or religious or similar beliefs in order to monitor compliance with equal opportunities legislation;
  - (c) information relating to any criminal proceedings in which the Consultant Company has been involved, for insurance purposes and in order to comply with legal requirements and obligations to third parties; and
- 8.2 The Consultant Company shall, and shall procure that the Individual shall comply with the Council's data protection policy and relevant obligations under the Data Protection Legislation and associated codes of practice when processing personal data relating to any employee, worker, customer, contractor, supplier or agent of the Council.

## **9. INTELLECTUAL PROPERTY**

- 9.1 The Consultant Company warrants to the Council that it has obtained from the Individual a written and valid assignment of all existing and future Intellectual Property Rights in the Works and the Inventions and of all materials embodying such rights and a written irrevocable waiver of all the Individual's statutory moral rights in the Works, to the fullest extent permissible by law, and that the

Individual has agreed to hold on trust for the Consultant Company any such rights in which the legal title has not passed (or will not pass) to the Consultant Company. The Consultant Company agrees to provide to the Council a copy of this assignment on or before the date of this agreement.

9.2 The Consultant Company hereby assigns to the Council all existing and future Intellectual Property Rights in the Works and the Inventions and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this agreement, the Consultant Company holds legal title in these rights and inventions on trust for the Council.

9.3 The Consultant Company undertakes:

- (a) to notify to the Council in writing full details of any Inventions promptly on their creation;
- (b) to keep confidential details of all Inventions;
- (c) whenever requested to do so by the Council and in any event on the termination of the Engagement, promptly to deliver to the Council all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Works and the process of their creation which are in his possession, custody or power;
- (d) not to register nor attempt to register any of the Intellectual Property Rights in the Works, nor any of the Inventions, unless requested to do so by the Council; and
- (e) to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the Works and the Inventions has passed, or will pass, to the Council.

and confirms that the Individual has given written undertakings in the same terms to the Consultant Company.

9.4 The Consultant Company warrants that:

- (a) it has not given and will not give permission to any third party to use any of the Works or the Inventions, nor any of the Intellectual Property Rights in the Works;
- (b) it is unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and
- (c) the use of the Works or the Intellectual Property Rights in the Works by the Council will not infringe the rights of any third party,

and confirms that the Individual has given written undertakings in the same terms to the Consultant Company.

- 9.5 The Consultant Company agrees to indemnify the Council and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Council, or for which the Council may become liable, with respect to any intellectual property infringement claim or other claim relating to the Works or Inventions supplied by the Consultant Company to the Council during the course of providing the Services. The Consultant Company shall maintain adequate liability insurance coverage and ensure that the Council's interest is noted on the policy, and shall supply a copy of the policy to the Council on request. The Council may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Consultant Company.
- 9.6 The Consultant Company acknowledges that, except as provided by law, no further fees or compensation other than those provided for in this agreement are due or may become due to the Consultant Company in respect of the performance of his obligations under this clause 9.
- 9.7 The Consultant Company undertakes to execute all documents, make all applications, give all assistance and do all acts and things, at the expense of the Council and at any time either during or after the Engagement, as may, in the opinion of the Council, be necessary or desirable to vest the Intellectual Property Rights in, and register or obtain patents or registered designs in, the name of the Council and to defend the Council against claims that works embodying Intellectual Property Rights or Inventions infringe third party rights, and otherwise to protect and maintain the Intellectual Property Rights in the Works. The Consultant Company confirms that the Individual has given written undertakings in the same terms to the Consultant Company.

## **10. INSURANCE AND LIABILITY**

- 10.1 The Consultant Company shall have liability for and shall indemnify the Council for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Consultant Company or the Individual or any Substitute engaged by it of the terms of this agreement including any negligent or reckless act, omission or default in the provision of the Services and shall accordingly maintain in force during the Engagement full and comprehensive Insurance Policies.
- 10.2 The Consultant Company shall indemnify the Council against any breach of the Data Protection Act 1998 ('DPA') arising out of any unauthorised and unlawful processing, accidental loss or destruction of, or damage or theft to personal

data: and arising out of any action or inaction of the Consultant Company and/or the Individual resulting in the Council being in breach of any of its obligations or duties under the DPA or equivalent applicable legislation.

- 10.3 The Consultant Company shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to the Council and that the level of cover and other terms of insurance are acceptable to and agreed by the Council.
- 10.4 The Consultant Company shall on request supply to the Council copies of such Insurance Policies and evidence that the relevant premiums have been paid.
- 10.5 The Consultant Company shall comply (and shall procure that the Individual complies) 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 Company 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 Company shall notify the Council without delay.

## **11. TERMINATION**

- 11.1 Notwithstanding the provisions of clause **Error! Reference source not found.**, the Council may terminate the Engagement with immediate effect without notice and without any liability to make any further payment to the Consultant Company (other than in respect of amounts accrued before the Termination Date) if at any time:
  - (a) the Consultant Company or the Individual commits any gross misconduct affecting the Business of the Council;
  - (b) the Consultant Company or the Individual commits any serious or repeated breach or non-observance of any of the provisions of this agreement or refuses or neglects to comply with any reasonable and lawful directions of the Council;
  - (c) the Individual is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed); or
  - (d) the Consultant Company or the Individual is, in the reasonable opinion of the Board, negligent or incompetent in the performance of the Services;
  - (e) the Individual is declared bankrupt or makes any arrangement with or for the benefit of his creditors or has a county court administration order made against him under the County Court Act 1984;

- (f) the Consultant Company makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding-up order is made or an administrator or receiver is appointed in relation to the Consultant Company;
- (g) the Individual is incapacitated (including by reason of illness or accident) from providing the Services for a period of TWENTY ONE WORKING DAYS days during the currency of this agreement;
- (h) the Individual does not own all of the issued share capital (from time to time) of the Consultant Company;
- (i) the Consultant Company or the Individual commits any fraud or dishonesty or acts in any manner which in the opinion of the brings or is likely to bring the Individual, the Consultant Company or the Council into disrepute or is materially adverse to the interests of the Council;
- (j) the Consultant Company or the Individual commits any breach of the Council's policies and procedures; or
- (k) the Consultant Company or the Individual commits any offence under the Bribery Act 2010.

11.2 The rights of the Council under clause 11.1 are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this agreement on the part of the Consultant Company as having brought the agreement to an end. Any delay by the Council in exercising its rights to terminate shall not constitute a waiver of these rights.

## 12. OBLIGATIONS ON TERMINATION

On the Termination Date the Consultant Company shall, and shall procure that the Individual shall:

- (a) immediately deliver to the Council all Council Property and original Confidential Information which is in its or his possession or under its or his control;
- (b) irretrievably delete any information relating to the Business of the Council stored on any magnetic or optical disk or memory and all matter derived from such sources which is in its or his possession or under its or his control outside the premises of the Council. For the avoidance of doubt, the contact details of business contacts made during the Engagement are regarded as Confidential Information, and as such, must be deleted from personal social or professional networking accounts; and

- (c) provide a signed statement that it or he has complied fully with its or his obligations under this clause **Error! Reference source not found.**, together with such evidence of compliance as the Council may reasonably request.

### **13. STATUS**

- 13.1 The relationship of the Consultant Company (and the Individual) to the Council will be that of independent contractor and nothing in this agreement shall render it (nor the Individual) an employee, worker, agent or partner of the Council and the Consultant Company shall not hold itself out as such and shall procure that the Individual shall not hold himself out as such.
- 13.2 This agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant Company shall be fully responsible for and shall indemnify the Council for and in respect of:
  - (a) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Individual or any Substitute against the Council arising out of or in connection with the provision of the Services.
- 13.3 The Council may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Consultant Company.
- 13.4 The Consultant Company warrants that it is not nor will it prior to the cessation of this agreement, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.
- 13.5 The parties hereto acknowledge that this agreement is not an employment contract and accordingly falls outside the Intermediaries Legislation (IR35).
- 13.6 Furthermore, the Council shall be responsible for determining the status of the Contract in relation to the Intermediaries Legislation (IR35) and shall indemnify the Consulting Company in relation to any claim in relation to:
  - (a) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the Individual in respect of the Services, where such recovery is not prohibited by law. The Council shall further indemnify the Consulting Company against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Consulting Company or Individual in

connection with or in consequence of any such liability, deduction, contribution, assessment or claim.

#### **14. FREEDOM OF INFORMATION**

14.1 The Consultant Company acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**).

14.2 The Consultant Company shall and shall procure that the Individual shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Council all requests for information relating to this agreement that it receives as soon as practicable and in any event within 2 working days of receipt;
- (c) provide the Council with a copy of all information belonging to the Council requested in the request for information which is in its possession or control in the form that the Council requires within 5 working days (or such other period as the Council may reasonably specify) of the Council's request for such information; and
- (d) not respond directly to a request for information unless authorised in writing to do so by the Council.

14.3 The Consultant Company acknowledges that the Council may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the Recipient. The Council shall take reasonable steps to notify the Consultant Company of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Council shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

#### **15. EQUALITIES AND DIVERSITY**

15.1 The Consultant Company shall, and shall procure that the Individual shall:

- (a) perform its obligations under this agreement (including those in relation to the Service) in accordance with:

- (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- (ii) the Council's equality and diversity policy as provided to the Consultant Company from time to time; and
- (iii) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality Law; and

(b) take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

## **16. NOTICES**

16.1 Any notice given under this agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party at its registered office for the time being. Any such notice shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting.

16.2 In proving such service it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post.

## **17. ENTIRE AGREEMENT**

Each party on behalf of itself acknowledges and agrees with the other party that:

- (a) this agreement constitutes the entire agreement and understanding between the Consultant Company and the Council and supersedes any previous arrangement, understanding or agreement between them relating to the Engagement (which shall be deemed to have been terminated by mutual consent);
- (b) in entering into this agreement neither party has relied on any Pre-Contractual Statement; and
- (c) each party agrees that the only rights and remedies available to it or arising out of or in connection with any Pre-Contractual Statement



shall be for breach of contract. Nothing in this agreement shall, however, limit or exclude any liability for fraud.

**18. VARIATION**

No variation of this agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

**19. COUNTERPARTS**

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

**20. THIRD PARTY RIGHTS**

20.1 Except as expressly provided elsewhere in this agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

20.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any person that is not a party to this agreement.

**21. GOVERNING LAW AND JURISDICTION**

21.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.

21.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

Signed as a deed for and  
on behalf of Penzance Council  
by an authorised signatory

.....

Signed as a deed for and on behalf of  
the Consultant Company by

[Name / Title]

.....

in the presence of:

.....

SIGNATURE OF WITNESS

NAME:

ADDRESS OF WITNESS:

## **Schedule**

## **Services**

[To be added]