



## TERMS AND CONDITIONS - CONSULTANCY APPOINTMENT

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

“Bribery Act means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

- (i) was public knowledge at the time of disclosure (otherwise than by breach of clause 16;
- (ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (iv) is independently developed without access to the Confidential Information.

“Contract Period” means the period from the date stipulated in clause 2 to the date of expiry stipulated or such earlier date of termination or partial termination of the agreement in accordance with the Law or the provisions of the Contract.

“Contracting Authority” means West Lindsey District Council

“Consultant” means the person, firm or company with whom the Council enters into the Contract.

“Default” means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any

other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

“DPA” means the General Data Protection Regulations 2018 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“Environmental Information Regulations” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“Equality and Diversity Policy” means an equality and diversity policy which sets out an organisation’s aims and obligations with regards equality in both employment and in service delivery (both goods and services).

“Equality Impact Assessment” means a systematic and evidenced based tool required to be undertaken under discrimination law used to identify the likely impact of work/services on different groups of people with resultant recommendations/ mitigations to be implemented in respect of any identified impacts to groups in society.

“Equality Legislation” means the Equality Act 2010 and such other acts and legislation to ensure, among others; equality of access to goods and services; promotion of good relations between groups in society; the provision of reasonable adjustments for people with disabilities; and equality in employment; equality legislation shall help organisations and providers to meet their obligations under anti-discrimination laws.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“Fraud” means any offence under Law creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Council.

“Information” has the meaning given under section 84 of the FOIA.

“Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Consultant is bound to comply.

“Party” means a party to the Appointment.

“Prohibited Act” means any of the following acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or
  - (iv) defrauding, attempting to defraud or conspiring to defraud the Council.

“Request for Information” shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

“Staff” means all persons employed by the Consultant to perform its obligations under the Contract together with the Consultant’s servants, agents, Consultants and sub-consultants used in the performance of its obligations under the Contract.

“Sub-Contract” means any contract or agreement, or proposed contract or agreement between the Consultant and any third party whereby that third party agrees to provide to the Consultant the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services.

“Sub-Consultant” means the third parties that enter into a Sub-Contract with the Consultant.

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;

- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- (g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

## **2. COMMENCEMENT AND DURATION**

- 2.1 This Agreement shall commence on [insert date] and shall remain in force for a period of [insert timeframe] unless terminated in accordance with clause 24 and the parties may before the expiry of this Agreement agree to extend this Agreement for a further period as will be determined and agreed between them provided that the total period of such extension shall not exceed 12 months and that the Party seeking an extension shall not later than 2 months before the expiration of the initial Term serve upon the other Party a notice in writing requesting an extension and the receiving party shall respond to such notice within 14 days of receipt thereof by failure of which the notice will be deemed not to have been served and the Agreement will expire and the end of the initial 12 month period. (“the Term”).

## **3. SERVICES**

- 3.1 The Consultant shall during the Term provide the services set out in Request for Quotation document (“the Services”) in accordance in all respects with the provisions of this Agreement.
- 3.2 The Consultant shall have reasonable autonomy in relation to determining the method of performance of the Services provided that this provision in no way diminishes the Consultant’s responsibility to perform the Services in accordance with the terms and conditions of this Agreement.
- 3.3 The Consultant shall provide such additional services within its discipline and competence as the Council may reasonably request in writing relating to the Project.

- 3.4 The Consultant shall comply with all reasonable instructions given to it by the Council in writing in connection with this Appointment.
- 3.5 The Consultant shall perform its obligations under the Appointment in accordance with the Law.

#### **4. DUTY OF CARE**

- 4.1 The Consultant shall in the performance of all its duties under this Agreement use all the professional reasonable skill, care and diligence reasonably to be expected of a duly qualified and experienced consultant undertaking services such as those hereby undertaken by it in relation to projects of the scale and character of the Project and to the performance requirements of the Council in accordance with best professional practice having regard to and showing familiarity with the constraints imposed on local authorities in the performance of their statutory duties in relation to the Services taking into account the policy and other requirements of the Council including but not limited to the Council's Procedure Rules and any Codes of Practice and Standards (national or local) applicable thereto.
- 4.2 No inspection or approval or review on the Council's part or on its behalf, and no omission to inspect or review or to disapprove shall negate or diminish any duty or liability on the part of the Consultant under or in connection with this Agreement.

#### **5. COUNCIL RESPONSIBILITIES**

Unless otherwise specified in the Agreement:

- 5.1 The Council shall provide such reasonable and necessary facilities as shall have been agreed with the Consultant to enable the Consultant to provide the services.
- 5.2 The Council's named Lead Officer or such other person or persons nominated in writing by the Council from time to time shall be the duly authorised to act in the name of the Council for the purposes of this Agreement or any constituent part thereof.
- 5.3 The Council's Lead Officer referred to in clause 5.2 shall have the power to issue instructions to the Consultant on any matter relating to the provision of the Services and the Consultant shall comply therewith.

#### **6. CONSULTANT'S RESPONSIBILITIES**

- 6.1 The Consultant shall in the provision of the Services comply with all rules, requirements and obligations whether statutory or otherwise applicable to any use of the Consultant of premises occupied by the Council and equipment or materials therein or otherwise generally arising from the provision of the Services.
- 6.2 The Consultant shall as may be necessary or desirable co-operate, liaise with and co-ordinate its activities with those of any other consultant or sub-consultant employed directly or indirectly by the Council and shall provide the

Services in harmony with and at no detriment to any other service provided by or on behalf of or to the Council. If the Consultant defaults in complying or fails to comply with this Condition then any costs, expenses, liabilities or damages incurred by the Council as a consequence thereof, including the reasonable cost to the Council or the time spent by its officers as a result of the default or failure, may be deducted from any sums due or to become due to the Consultant under this Agreement or shall be recoverable from the Consultant by the Council as a debt.

- 6.3 If the Consultant is unable or fails to provide the Services or any part thereof in accordance with the requirements in Clause 4.1, the Council may itself provide or may employ and pay other persons to provide the Services or any part thereof and all costs incurred thereby may be deducted from any sums due or to become due to the Consultant under this Agreement or shall be recoverable from the Consultant by the Council as a debt. The Council's rights under this Condition shall be without prejudice to any other rights or remedies which it may possess.

## **7. THE CONSULTANT'S STAFF**

- 7.1 The Consultant shall appoint a senior person as Contract Representative empowered to act on behalf of the Consultant for all purposes connected with the Agreement. Such appointment or any further appointment shall be subject to the approval in writing of the Council. The Contract Representative shall not be replaced without prior written approval of the Council (such approval not to be unreasonably withheld). Any notice, information, instruction or other communication given to the Contract Representative shall be deemed to have been given to the Consultant.
- 7.2 The Consultant shall forthwith give notice in writing to the Council of the identity, address and telephone numbers of any person appointed as the Contract Representative and of any subsequent appointment.
- 7.3 The Consultant shall use all reasonable endeavours to ensure that, at no additional cost to the Council, the Contract Representative or a competent deputy, duly authorised by the Consultant to act on its behalf, is available to be contacted by the Council's Lead Officer or other duly authorised person at all times during the Council's usual working day hours.
- 7.4 The Consultant shall, prior to the commencement date of this Agreement, supply to the Council the names of managers and other personnel engaged in and about the provision of the Services and shall throughout the Term of this Agreement keep the Council informed of any changes in such managers and other personnel within 7 days of such change.
- 7.5 The Consultant's Staff employed in and about the provision of the Services shall be properly and sufficiently qualified, competent, skilled, honest and experienced and shall at all times exercise care in the execution of their duties and the Consultant shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of the Services and in particular:

- 7.5.1 the task or tasks such person has to perform;
  - 7.5.2 all relevant provisions of the Contract and related functions of the Council;
  - 7.5.3 all relevant policies, rules, procedures and standards of the Council;
  - 7.5.4 all relevant rules, procedures and statutory requirements concerning health and safety.
- 7.6 The Council's Lead Officer shall, upon giving notice in writing, have the power to require the Consultant to remove from the provision of the Services any personnel of the Consultant specified in such notice including the Contract Representative. The Consultant shall forthwith remove such personnel from the provision of the Services and shall immediately provide a replacement unless the Council determines otherwise. The Council shall in no circumstances be liable either to the Consultant or to such personnel in respect of any costs, expense, liability, loss or damage occasioned by such removal and the Consultant shall fully indemnify the Council in respect of any claim made by such personnel.

## **8. PAYMENT**

- 8.1 Fees payable under this Agreement shall be for [insert days] at a daily rate of £xx.00 per day and is inclusive of all local travel within 5 miles of the offices of the Council, incidental costs and disbursements. All other costs shall only be paid by the Council if agreed between the Consultant and the Council and travel expenses other than local travel shall if agreed between the Council and the Consultant be paid at the standard rate of the Council applicable at the relevant time. The Council shall not be liable to make payment to the Consultant under this Agreement for more than ..... working days.
- 8.2 The Consultant shall submit an invoice to the Council in respect of the Services rendered on a monthly basis not later than the last day of each calendar month. Each invoice shall be addressed to Procurement Team and be submitted to: West Lindsey District Council, Guildhall, Marshall's Yard, Gainsborough, DN21 2NA or any other address as the Council may notify the Consultant in writing.
- 8.3 The Consultant shall supply evidence to the Council to support the invoice and must be submitted to the Council's Lead Officer.
- 8.4 The Council shall pay each invoice within 30 days of receipt of a valid invoice.
- 8.5 If at the Council's request the Consultant undertakes any additional services or any other circumstances beyond the Consultant's control it is required to undertake significant extra work, then provided that the Consultant notifies the Council in writing before undertaking such work or additional services that the Consultant may require an additional fee, an additional fee will be payable. Such additional fee shall be calculated at the applicable daily rate specified in Sub-Clause 8.1.

- 8.6 Notwithstanding Sub-Clause 8.4, the Council reserves the right to withhold payment against any invoice which is not in accordance with this Agreement or which covers or purports to cover the services which have not been provided in accordance with this Agreement and shall notify the reasons to the Consultant in writing forthwith.
- 8.7 Payments by the Council to the Consultant shall be made direct to a nominated bank account of the Consultant through the Bankers Automated Clearing Services Ltd, except where at any time this is not practicable.
- 8.8 LCC shall in addition to the sums specified in Sub-Clause 8.1 pay to the Consultant any VAT payable in respect of the performance of the Services under this Agreement.
- 8.9 Interest shall be payable on the late payment of any undisputed sums of money due to either Party under this Contract such interest to be calculated at the rate of 2% over the Bank of England base rate for the time being, from the final date for payment to and including the date on which such amount is paid or discharged.

## **9. OVERPAYMENTS**

- 9.1 Where any payment is made by the Council and it is subsequently established that in the circumstances existing at the relevant time the Council was only liable under the terms of this Agreement to pay the Consultant a lesser sum (or none at all), the Consultant shall repay the amount of the overpayment within 7 days from receiving notice from the Council of such overpayment.

## **10. RECOVERY OF SUMS DUE**

- 10.1 Wherever under this Agreement any sum of money is recoverable from or payable by the Consultant that sum may be deducted from any sum then due, or which at any later time may become due, to the Consultant under this Agreement or any other contract with the Council.

## **11. CONFLICT OF INTEREST**

- 11.1 The Consultant shall take appropriate steps to ensure that neither the Consultant nor any of its staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or any other interests of the Consultant and the duties owed to the Council under the provisions of the Agreement. The Consultant will disclose to the Council full particulars of any such conflict of interest which may arise.
- 11.2 The Council reserves the right to terminate the Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or any other interests of the Consultant and the duties owed to the Council under the provisions of the Agreement. The actions of the Council pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.



## **12. RETENTION OF DOCUMENTS**

- 12.1 The Consultant shall retain original invoices and claims, together with all other documents necessary to verify the Services provided and activities undertaken for at least three years from the date of the invoice submitted to the Council to which such documents relate.

## **13. INDEMNITY AND INSURANCE**

- 13.1 Neither Party excludes or limits liability to the other Party for:

- (a) death or personal injury caused by its negligence; or
- (b) fraud; or
- (c) fraudulent misrepresentation.

- 13.2 Subject to clauses 13.3 and 13.4, the Consultant shall indemnify the Council and keep the Council indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Consultant of its obligations under the Contract or the presence of the Consultant or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Consultant, or any other loss which is caused directly or indirectly by any act or omission of the Consultant.

- 13.3 The Consultant shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.

- 13.4 The Consultant shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Consultant.

- 13.5 The Consultant shall take out and maintain in force with a reputable insurance office the following insurances:-

13.5.1 public liability insurance with a minimum limit of indemnity of £5,000,000 in any one claim unlimited in aggregate;

13.5.2 employer's liability insurance with a minimum limit of indemnity of £5,000,000 in any one claim unlimited in aggregate; and

13.5.3 professional indemnity insurance with a minimum limit of indemnity of £1,000,000 in any one claim unlimited in aggregate.

- 13.6 The Consultant shall give the Council not less than thirty days notice in writing of any alteration or cancellation of such insurance cover. If at any time the Consultant fails to take out or maintain insurance as required by this clause the Council may take out such insurance on behalf of the Consultant and recover from the Consultant the cost of so doing.
- 13.7 Subject always to clause 13.1; in no event shall either Party be liable to the other for any:
- (a) loss of profits, business, revenue or goodwill; and/or
  - (b) loss of savings (whether anticipated or otherwise); and/or
  - (c) indirect or consequential loss or damage.
- 13.8 The Consultant shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 13.9 If, for whatever reason, the Consultant fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Consultant.
- 13.10 The provisions of any insurance or the amount of cover shall not relieve the Consultant of any liabilities under the Contract.
- 13.11 The Parties acknowledge and agree that this Agreement constitutes a contract for the provision of Services and not a contract of employment. The Consultant shall at all times indemnify the Council and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the staff whether during the term of this Agreement or arising from termination or expiry of this Agreement.

#### **14. OBSERVANCE OF LEGAL REQUIREMENT**

- 14.1 In carrying out the Services and in performing its obligations under this Agreement the Consultant shall comply with all applicable laws and in particular but without limitation
- (a) shall not commit an act of discrimination rendered unlawful by any enactment; and
  - (b) shall comply with all relevant requirements contained in or having effect under any legislation relating to health, safety and welfare and

14.2 The Consultant shall at all times in performing the Services have regard to any legal requirements or guidance governing the development, form or content of a community strategy.

## **15. DATA PROTECTION**

15.1 Any documentation or data of any description made available to the Consultant by the Council under this Agreement or otherwise in the course of the performance by the Consultant of the Services and its obligations under this Agreement shall at all times remain the property of the Council.

15.2 The Consultant warrants and undertakes to the Council that:-

(a) any personal data to be processed by the Consultant in the course of carrying out the Services and its obligations under this Agreement shall be processed in accordance with the General Data Protection Regulations 2018 (referred to in the rest of this clause as “the DPA”);

(b) it shall co-operate with and provide such assistance to the Council as shall reasonably be necessary to enable the Council to comply with its obligations under the DPA in relation to the subject matter of this Agreement including any request by a data subject for access to any of their personal data;

15.3 The Consultant shall indemnify the Council against any loss or damage sustained or incurred by the Council as a result of any breach by the Consultant of this clause 15.

## **16. CONFIDENTIALITY**

16.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:

(a) treat the other party's Confidential Information as confidential and safeguard it accordingly; and

(b) not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

16.2 Clause 16.1 shall not apply to the extent that:

(a) such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 17 (Freedom of Information);

(b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

(c) such information was obtained from a third party without obligation of confidentiality;

- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
  - (e) it is independently developed without access to the other party's Confidential Information.
- 16.3 The Consultant may only disclose the Council's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 16.4 The Consultant shall not, and shall procure that the Staff do not use any of the Council's Confidential Information received otherwise than for the purposes of this Agreement.
- 16.5 At the written request of the Council, the Consultant shall procure that the members of the Staff identified in the Council's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.
- 16.6 Nothing in this Agreement shall prevent the Council from disclosing the Consultant's Confidential Information:
  - (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
  - (b) to any consultant, contractor or other person engaged by the Council or any person conducting an Office of Government Commerce gateway review;
  - (c) for the purpose of the examination and certification of the Council's accounts; or
  - (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.
- 16.7 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-consultant to whom the Consultant's Confidential Information is disclosed pursuant to clause 16.6 is made aware of the Council's obligations of confidentiality.
- 16.8 Nothing in this clause 16 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a

disclosure of the other Party's Confidential Information or an infringement of IPR.

## **17. FREEDOM OF INFORMATION**

- 17.1 The Consultant acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- 17.2 The Consultant shall and shall procure that any sub-consultants shall transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- (a) provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and
  - (b) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 17.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations
- 17.4 In no event shall the Consultant respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 17.5 The Consultant acknowledges that (notwithstanding the provisions of Clause 16) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Consultant or the Services in certain circumstances:
- (a) without consulting the Consultant; or
  - (b) following consultation with the Consultant and having taken their views into account;

provided always that where 17.5(a) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Consultant advanced notice, or failing that, to draw the disclosure to the Consultant's attention after any such disclosure.

17.6 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.

## **18. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS**

18.1 All documents, including drafts, or other materials of whatsoever nature produced created or generated by or on behalf of the Consultant in the performance of the Services and this Agreement shall be fully owned by the Council and the Council shall have the right to make, disseminate and distribute copies of them as it sees fit.

18.2 All Intellectual Property Rights in any documents, including drafts or other materials of whatsoever nature produced created or generated by or on behalf of the Consultant in the performance of the Services and this Agreement shall vest in the Council.

18.3 The Consultant hereby undertakes to execute all such documents and to do all such acts and things as shall be necessary to vest such intellectual property rights in the Council as required by clause 18.2.

18.4 The Consultant hereby undertakes to indemnify and keep indemnified the Council from and against any action, claim, demand or proceedings in respect of any allegation that any possession or use by the Council of any documents including drafts or other materials of whatsoever nature produced created or generated by or on behalf of the Consultant in the performance of the Services breaches any third party's Intellectual Property Rights and against any damages losses costs charges and expenses incurred by the Council in respect thereof or in relation thereto.

18.5 Nothing in this Agreement shall transfer to the Consultant any Intellectual Property Rights owned by the Council or any third party in any documents or other materials of whatsoever nature provided to the Consultant by the Council for the purposes of this Agreement or otherwise.

18.6 In this clause 18 the term "Intellectual Property Rights" shall mean any and all patents, trademarks, service marks, logos, copyright, rights in databases, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto.

18.7 The Consultant shall waive or procure the waiver of all and any moral rights in any documents, including drafts or other materials of whatsoever nature produced created or generated by or on behalf of the Consultant in the performance of the Services and this Agreement.

## **19. STATUTORY OBLIGATIONS AND REGULATIONS**

## **Prevention of Bribery**

The Consultant:

- 19.1 shall not, and shall procure that all Staff shall not, in connection with this Contract commit a Prohibited Act;
- 19.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract. The Consultant shall:
- 19.3 if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- 19.4 within 5 Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Consultant) compliance with this clause 19 by the Consultant and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Consultant shall provide such supporting evidence of compliance as the Council may reasonably request.
- 19.5 The Consultant shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Consultant party or Staff from committing a Prohibited Act and shall enforce it where appropriate.
- 19.6 If any breach of clause 19.1 is suspected or known, the Consultant shall notify the Council immediately.
- 19.7 If the Consultant notifies the Council that it suspects or knows that there may be a breach of clause 19.1, the Consultant must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for 6 (six) years following the Expiry Date or termination of this Agreement.
- 19.8 The Council may terminate this Agreement by written notice with immediate effect if the Consultant or Staff (in all cases whether or not acting with the Consultant's knowledge) breaches clause 19.
- 19.9 Any notice of termination under clause 19.8 must specify:
  - (a) the nature of the Prohibited Act;
  - (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
  - (c) the date on which this Agreement shall terminate.

- 19.10 Despite clause 32 (Disputes), any dispute relating to:
- (a) the interpretation of clause 19; or
  - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.

19.11 Any termination under clause 19.8 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

### **Prevention of Corruption**

19.12 The Consultant shall not offer or give, or agree to give, to the Council or any other public body or any person employed by or on behalf of the Council or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.

19.13 The Consultant warrants that it has not paid commission or agreed to pay commission to the Council or any other public body or any person employed by or on behalf of the Council or any other public body in connection with the Contract.

19.14 If the Consultant, its Staff or anyone acting on the Consultant's behalf, engages in conduct prohibited by clauses 19.12 or 19.13, the Council may:

- (a) terminate the Contract and recover from the Consultant the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or
- (b) recover in full from the Consultant any other loss sustained by the Council in consequence of any breach of those clauses.

### **Prevention of Fraud**

19.15 The Consultant shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Consultant (including its shareholders, members and directors) in connection with the receipt of monies from the Council.

19.16 The Consultant shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

19.17 If the Consultant or its Staff commits Fraud in relation to this or any other contract with the Council, the Council may:

- (a) terminate the Contract and recover from the Consultant the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for



the supply of the Goods and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or

- (b) recover in full from the Consultant any other loss sustained by the Council in consequence of any breach of this clause.

### **ANTI-DISCRIMINATION**

- 19.18 The Consultant shall not unlawfully discriminate within the meaning and scope of Equality Legislation or other any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 19.19 The Consultant shall take all reasonable steps to secure the observance of Clause 19.18 by all Staff employed in performance of this Contract.
- 19.20 The Consultant shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against him under Equality Legislation or other any law, enactment, order or regulation.
- 19.21 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Consultant's performance of this Contract being in contravention of Equality Legislation or other any law, enactment, order or regulation relating to discrimination, the Consultant shall, free of charge provide any information requested in the timescale allotted; attend any meetings as required and permit the Consultant's Staff to attend; promptly allow access to and investigation of any documents or data deemed to be relevant; allow the Consultant and any of the Consultant's Staff to appear as witness in any ensuing proceedings; and cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 19.22 Where any investigation is conducted or proceedings are brought under Equality Legislation or other any law, enactment, order or regulation relating to discrimination which arise directly or indirectly out of any act or omission of the Consultant, its agents or sub-contractors, or the Consultant's Staff, and where there is a finding against the Consultant in such investigation or proceedings, the Consultant shall indemnify the Council with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party.
- 19.23 The Consultant must ensure that all written information produced or used in connection with this Contract is as accessible as possible to people with disabilities and to people whose level of literacy in English is limited.
- 19.24 The Consultant acknowledges that the Council may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of the Services and the Consultant shall provide all necessary

assistance and information to the Council as may be required in relation to the performance of an impact analysis by the Council. The Consultant shall implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by the Council.

## **Safeguarding**

19.25 The Consultant shall make the necessary arrangements to ensure compliance with all Laws relevant to the duty to safeguard and promote the welfare of vulnerable adults and children in the delivery of all aspects of the Service including but not limited to the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) and The Mental Health Act 1983.

19.26 The Consultant shall make the necessary arrangements to ensure compliance with registration requirements with the Disclosure and Barring Service.

## **Safeguarding Vulnerable Adults**

19.27 To fulfil the commitment to safeguard and promote the welfare of vulnerable adults, the Consultant shall have:

- a) Clear priorities for safeguarding and promoting the welfare of vulnerable adults explicitly stated in strategic policy documents;
- b) A clear commitment by senior management to the importance of safeguarding and promoting vulnerable adults' welfare;
- c) A clear line of accountability within the organisation for work on safeguarding and promoting the welfare of vulnerable adults;
- d) Recruitment and human resources procedures that take account of the need to safeguard and promote the welfare of vulnerable adults;
- e) Procedures for dealing with allegations of abuse against members of staff and volunteers;
- f) Arrangements to ensure all Staff undertake appropriate training and refresher training to enable them to carry out their responsibilities effectively;
- g) Policies for safeguarding and promoting the welfare of vulnerable adults and procedures that are in accordance with guidance and locally agreed inter-agency procedures;
- h) Arrangements to work effectively with other organisations to safeguard and promote the welfare of vulnerable adults including sharing of information;
- i) A culture of listening to and engaging in dialogue with vulnerable adults; and
- j) Appropriate whistle-blowing procedures.

## **Safeguarding Children**

19.28 The Consultant shall make the necessary arrangements to ensure compliance with Section 11 of the Children Act 2004 (the duty to safeguard and promote the welfare of children in the delivery of all aspects of the Service) and

Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012).

- 19.29 To fulfil the commitment to safeguard and promote the welfare of children, the Consultant shall have:
- a) Clear priorities for safeguarding and promoting the welfare of children explicitly stated in strategic policy documents;
  - b) A clear commitment by senior management to the importance of safeguarding and promoting children's welfare;
  - c) A clear line of accountability within the organisation for work on safeguarding and promoting the welfare of children;
  - d) Recruitment and human resources procedures that take account of the need to safeguard and promote the welfare of children;
  - e) Procedures for dealing with allegations of abuse against members of staff and volunteers;
  - f) Arrangements to ensure all Staff undertake appropriate training and refresher training to enable them to carry out their responsibilities effectively;
  - g) Policies for safeguarding and promoting the welfare of children and procedures that are in accordance with guidance and locally agreed inter-agency procedures;
  - h) Arrangements to work effectively with other organisations to safeguard and promote the welfare of children including sharing of information;
  - i) A culture of listening to and engaging in dialogue with children; and
  - j) Appropriate whistle-blowing procedures]

## **20. BEST VALUE**

- 20.1 The Consultant shall provide to the Council all such assistance, information and documentation as the Council shall reasonably require for the purpose of compliance with its obligations of Best Value under the Local Government Act 1999 (the "Act")
- 20.2 For the purposes of Clause 20, "Best Value" means arrangements to secure continuous improvement in the way the Council's functions are exercised having regard to a combination of economy, efficiency and effectiveness.

## **21. PUBLICITY**

- 21.1 The Consultant shall not, without the prior written consent of the Council, advertise or publicly announce that it is undertaking the Services.
- 21.2 The Council shall not, without the prior written consent of the Consultant, advertise or publicly announce that it is undertaking the Services.

## **22. AMENDMENT**

- 22.1 No amendment shall be made to this Agreement except with the written agreement of both parties

## **23. FORCE MAJEURE**

- 23.1 Neither party shall be liable for failure to perform its obligations under the

Agreement if such failure results from circumstances beyond the party's reasonable control including but not limited to industrial action, fire, flood, riot, war, Act of God, lightning, aircraft impact, explosion, civil commotion, malicious damage, storm, tempest, earthquake, legal enactment or governmental or other regulation. Notwithstanding the foregoing each Party shall use all reasonable endeavours to continue to perform its obligations under the Agreement for the duration of such Force Majeure and to ensure that any failure is kept to a minimum.

- 23.2 Any act, event, omission, happening or non-happening shall only be considered as force majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees.
- 23.3 If either Party shall become aware of circumstances identified in clause above which give rise to or which are likely to give rise to any failure or delay on its part, it shall forthwith notify the other party by the most expeditious method then available and shall inform the other of the period it is estimated that such failure or delay shall continue.
- 23.4 Where as a result of any event beyond the reasonable control of a party as described in this clause the Agreement has not been performed for a period exceeding (2) two months or it appears impossible or unlikely that the whole or a substantial part of the Agreement shall be capable of performance for a period exceeding (2) two months, then the non-defaulting party may elect to terminate the Agreement upon two weeks' written notice without any liability on that party.

## **24. TERMINATION**

- 24.1 The Council may terminate the Agreement without cause on the giving of reasonable written notice. The Council shall pay for work carried out prior to the date of termination but shall otherwise not be liable for any loss or damage whatsoever arising from such termination.
- 24.2 Where the Council terminates the Contract under clause 24.3(a) and then makes other arrangements for the supply of the Services, the Council may recover from the Consultant the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Term. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Agreement is terminated under clause 24.3(a), no further payments shall be payable by the Council to the Consultant (for Services supplied by the Consultant prior to termination and in accordance with the Agreement but where the payment has yet to be made by the Council), until the Council has established the final cost of making the other arrangements envisaged under this clause.
- 24.3 The Council may terminate the Agreement forthwith on written notice if:-
- (a) the Consultant is in breach of its obligations under the Agreement and if:
    - (i) the Consultant has failed to remedy the breach within 14 days of notice from the Council specifying the breach and requiring its remedy; or
    - (ii) the breach is not in the opinion of the Council capable of remedy; or

- (iii) the breach is a material breach of the Agreement
- (b) where the Consultant is a company and in respect of the Consultant:
- (i) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
  - (ii) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
  - (iii) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
  - (iv) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
  - (v) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
  - (vi) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
  - (vii) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986
- (c) where the Consultant is an individual and:
- (i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Consultant's creditors; or
  - (ii) a petition is presented and not dismissed within 14 days or order made for the Consultant's bankruptcy; or
  - (iii) a receiver, or similar officer is appointed over the whole or any part of the Consultant's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
  - (iv) the Consultant is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
  - (v) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Consultant's assets and such attachment or process is not discharged within 14 days; or
  - (vi) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
  - (vii) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

- (d) the Consultant being a partnership any of the matters referred to in 24.3 (c) applies to any partner or any partner dies or the partnership is dissolved.

24.5 The Consultant shall notify the Council immediately if the Consultant undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 (“**change of control**”). The Council may terminate the Agreement by notice in writing with immediate effect upon:

- (a) being notified that a change of control has occurred; or
- (b) where no notification has been made, the date that the Council becomes aware of the change of control,

but shall not be permitted to terminate where written consent was granted by the Council prior to the change of control.

## **25. OBLIGATIONS ON EXPIRY OR TERMINATION**

25.1 On expiry or termination of this Agreement for any reason the Consultant shall:-

- (a) use its reasonable endeavours to achieve an efficient and prompt handover of the Services to the Council or any third party nominated by the Council;
- (b) promptly hand over to the Council or any third party nominated by the Council all documents, including drafts or other data records or materials of whatsoever nature provided by the Council or generated by the Consultant in the course of the performance of the Services and its obligations under this Agreement;
- (c) provide such information and assistance as the Council shall reasonably require to enable the orderly and efficient transfer of the Services to the Council or any third party to include such information as shall be reasonably necessary to enable the Council to tender the Services and to comply with its obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Code of Practice on Workforce Matters in Local Authority Service Contracts.

## **26. ENVIRONMENTAL REQUIREMENTS**

26.1 The Consultant shall perform its obligations under the Contract in accordance with the Council’s environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

## **27 HEALTH AND SAFETY**

27.1 The Consultant shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.

- 27.2 While on Council Premises, the Consultant shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working there.
- 27.3 The Consultant shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 27.4 The Consultant shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.
- 27.5 The Consultant shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council on request.

## **28. STATUS**

- 28.1 The Consultant shall at all times act as principal and not as the agent for the Council. Accordingly, the Consultant shall refrain from saying or doing anything that might lead any other person reasonably to believe that the Consultant is acting as the agent of the Council.
- 28.2 Nothing in this Agreement shall create or be taken to have created a relationship of partnership or of employer/employee between the parties.

## **29. ASSIGNMENT AND SUB-CONTRACTING**

- 29.1 The Consultant shall not assign mortgage charge or otherwise dispose of any of its rights under this Agreement and shall not sub-contract or otherwise delegate or dispose of any of its obligations hereunder without the prior written consent of the Council.
- 29.2 No sub-contracting by the Consultant of the whole or any part of this Agreement shall relieve the Consultant of any of its obligations or liability hereunder and the Consultant shall be liable and responsible for the acts of its sub-contractors as if they were the acts of the Consultant.

## **30. WAIVER**

- 30.1 No waiver of any term provision or condition of this Agreement shall be effective unless made in writing and signed by a nominated representative of the waiving party and no omission or delay on the part of either party in exercising any right power or privilege under this Agreement shall operate as a waiver of it or of any right to exercise it in the future or to exercise any of its other rights powers or privileges under this Agreement.

## **31. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

31.1 This Agreement is intended to be enforceable by the parties to it and their successors and permitted assignees. Any right of any person to enforce this Agreement in whole or in part pursuant to the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

## **32. DISPUTE RESOLUTION**

32.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within 20 working days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the finance director or equivalent of each Party.

32.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

32.3 If the dispute cannot be resolved by the Parties pursuant to clause 32.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause 32.5.

32.4 The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Consultant (or its employees, agents, Consultants or sub-contractors) shall comply fully with the requirements of the Agreement at all times.

32.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

- (a) a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other reputable mediation body to appoint a Mediator.
- (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from Centre for Effective Dispute Resolution or other reputable mediation body to provide guidance on a suitable procedure.
- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.



- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties.
- (f) If the Parties fail to reach agreement in the structured negotiations within 30 working days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

### **33. GENERAL**

- 33.1 The Consultant is free to enter into other contracts for services with other parties, during the duration of this Agreement.

### **34. SEVERABILITY**

- 34.1 If any provision of this Agreement shall be prohibited or adjudged by any Court to be unlawful, void or unenforceable, such provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect the validity or enforceability of the remaining provisions of this Agreement.

### **35. SURVIVAL**

- 35.1 Any clause contained in this Agreement that by its context is intended to survive termination shall survive termination of this Agreement.

### **36. ENTIRE AGREEMENT**

- 36.1 This Agreement (including the Appendices) supersedes all prior writings, negotiations or understandings in respect hereof and the Consultant hereby agrees that in entering into this Agreement it has not relied on any representations or undertakings given by or on behalf of the Council save as set out in this Agreement.

### **37. APPLICABLE LAW**

- 37.1 This Agreement shall be governed by and construed in accordance with English law and subject to the exclusive jurisdiction of the English Court.