

DATE:

SWALE BOROUGH COUNCIL

and

[add name of contractor]

CONSULTANCY SERVICES AGREEMENT

For

[add type of service] Services

At **[add location]**

Mid Kent Legal Services
Swale Borough Council,
Swale House,
East Street,
Sittingbourne, Kent ME10 3HT

Ref: S0

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THIS AGREEMENT is made on the day of 2018

BETWEEN:

- (1) **SWALE BOROUGH COUNCIL** of Swale House, East Street, Sittingbourne, Kent, ME10 3HT (the “**Authority**”); and
- (2) **[add name of contractor]** (Company No. [add]) whose registered address is [add] (the “**Consultant**”).

WHEREAS:

- (A) The Authority has selected the Consultant to provide the Services and the Consultant is willing and able to provide the services in accordance with the terms and conditions of this Agreement.

NOW IT IS HEREBY AGREED:

1. DEFINITIONS AND INTERPRETATION

In the Agreement (including the Recitals):

- 1.1 Unless the context indicates otherwise the following expressions shall have the following meanings:

- “**Agreement**” this Agreement, including the Schedules and all other documents referred to in this Agreement;
- “**Authorised Officer**” The person appointed by the Authority to fulfil the role of Authorised Officer from time to time. The first Authorised Officer shall be as stated in **Schedule 1**
- “**Authority’s Data**” all information and documentation provided by the Authority to the Consultant pursuant to and in connection with this Agreement;
- “**Commencement Date**” as stated in **Schedule 1**
- “**Confidential Information**” all information (whether written or oral) that by its nature may reasonably be regarded as confidential by the Authority (whether commercial, financial, technical or otherwise) including information which relates to the business affairs, customers, suppliers, products, and/or software, telecommunications, networks, trade

	secrets, know-how or personnel of the Authority;
“Contract Information”	means <ul style="list-style-type: none"> a) this Agreement in its entirety (including from time to time agreed changes to the Agreement); and b) data extracted from the invoices submitted pursuant to Clause 5 which shall consist of the Consultant’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;
“Consultant’s Representative”	The person appointed by the Consultant to fulfil the role of Consultant’s Representative from time to time. The first Consultant’s Representative shall be as stated in Schedule 1
“Consultant’s Personnel”	all such employees, officers, suppliers, sub-consultants and agents of the Consultant as are engaged in the performance of any of the Services and including the Key Personnel;
“Data Controller”	shall have the same meaning as set out in the Data Protection Legislation;
“Data Processor”	shall have the same meaning as set out in the Data Protection Legislation;
“Data Protection Legislation”	means (i) the Data Protection Act 1998, until the effective date of its repeal, (ii) the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and (iii) any successor legislation to the Data Protection Act 1998 and the GDPR, in particular the Data Protection Bill 2017-2019, once it becomes law, and all applicable laws and

	regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
“Data Subject”	shall have the same meaning as set out in the Data Protection Legislation;
“Data Subject Access Request”	shall have the same meaning as set out in the Data Protection Legislation;
“Deleterious”	materials, equipment, products or kits that are generally accepted or generally suspected in the construction industry at the relevant time as; <ul style="list-style-type: none"> (a) posing a threat to the health and safety of any person; (b) posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project; (c) reducing or possibly reducing the normal life expectancy of the Project or any part or component of the Project; (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agreement certificate issued by the British Board of Agreement; or (e) having been supplied or placed on the market in breach of the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).
“Expiry Date”	the date on which the Project achieves practical completion. The estimated expiry date is as stated in Schedule 1 ;

“Fee”	as stated in Schedule 1 ;
“FOI Legislation”	the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Department for Constitutional Affairs or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
“Force Majeure Event”	any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes to the extent that such event has materially affected the ability of the Party relying on the Force Majeure Event (“Affected Party”) to perform its obligations in accordance with the terms of this Agreement but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact;
“Information”	information recorded in any form held by the Authority or by the Consultant on behalf of the Authority;
“Information Request”	a request for any Information under the FOI Legislation;
“Insolvency Event”	means any of the following: <ul style="list-style-type: none"> (a) the Consultant and/or the holding company making any voluntary arrangement with its

creditors or becoming subject to an administration order;

- (b) a receiver, administrative receiver, manager, or administrator being appointed over all or part of the business of the Consultant and/or the holding company;
- (c) being a company, the Consultant and/or the holding company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency);
- (d) the Consultant and/or the holding company ceasing or threatening to cease to carry on its business for any;
- (e) being a firm or partnership, upon its dissolution;
- (f) any similar event to those in (a) to (e) above occurring in relation to the Consultant and/or the holding company under the law of any applicable jurisdiction for those purposes;

“Intellectual Property Rights”

any patent, know-how, trade mark or name, service mark, design right (in each case whether registered or unregistered), copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;

“Key Personnel”

as set out in **Schedule 1**;

“Losses”	all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments;
“Payment Periods”	to be made in accordance with Schedule 1 ;
“Parties”	the Authority and the Consultant (including their successors and permitted assignees) and “Party” shall mean either of them as the case may be;
“Personal Data”	shall have the same meaning as set out in the Data Protection Legislation;
“Processing”	shall have the same meaning as set out in the Data Protection Legislation and the terms "Processed" and their derivatives shall be construed accordingly;
“Project”	[Add project title];
“Prohibited Act”	the following constitute acts: <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: <ul style="list-style-type: none"> (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 agreement; (c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act;

- (ii) under legislation or common law concerning fraudulent acts;
- (iii) defrauding, attempting to defraud or conspiring to defraud the Authority.
- (d) any activity, practice or conduct which would constitute one of the offences listed under paragraph (c), if such activity, practice or conduct had been carried out in the UK.

“Services”	means the services provided by the Consultant in connection with the Project as described in the Specification;
“Specification”	the specification set out in Schedule 2 ;
“Subject Access Request”	any request from a Data Subject under Chapter III Section 2 (information and Access to Data) of the GDPR;
“Sub-processor”	Any third party appointed to process Personal Data on behalf of the Contractor related to this Agreement;
“Term”	the period commencing on the Commencement Date and expiring on the Expiry Date;
“VAT”	means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature;
“Working Day”	any day excluding Saturdays, Sundays or public or bank holidays in England.

1.2 Interpretation

- 1.2.1** a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.2.2** a 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 or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to them whether replaced before or after the date of this Agreement;

- 1.2.3** a reference to any document other than as specified in **Clause 1.2.2** and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of this Agreement;
- 1.2.4** the Summary of Key Information and the headings and are included in the Agreement for ease of reference only and do not affect the interpretation or construction of the Agreement;
- 1.2.5** references to Clauses and Schedules are, unless otherwise provided, references to Clauses of, and Schedules to, the Agreement and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;
- 1.2.6** in the event, and only to the extent, of any conflict between the Clauses and the Schedules, the Clauses prevail, except where the conflicting part of the Schedule is explicitly expressed to take precedence or to be of equal importance to the applicable Clause(s).
- 1.2.7** except as otherwise expressly provided in this Agreement, and subject to **Clause 1.2.6**, if there is any inconsistency between any of these Clauses or the Schedules, or any other document referred to in or incorporated into this Agreement the order of priority for the purposes of construction is:
- a)** the Clauses;
 - b)** the Schedules;
 - c)** any other document referred to in or incorporated by reference into this Agreement.
- 1.2.8** the Schedules form part of the Agreement and will have the same force and effect as if expressly set out in the body of the Agreement;
- 1.2.9** the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.2.10** the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

2. COMMENCEMENT AND DURATION

- 2.1.** This Agreement commences on the Commencement Date and continues in force for the Term unless terminated earlier, either in whole or in part, in accordance with this Agreement.

3. SERVICES

- 3.1. The Consultant acknowledges that it has sufficient information about the Authority, the Services and the Specification (if any) and that it has made all appropriate and necessary enquiries to enable it to perform the Services.
- 3.2. The Consultant shall provide the Services:
 - 3.2.1. with the high degree of skill, care, ability and diligence normally exercised by recognised professional firms or by highly skilled and experienced consultants providing services of a similar scope, type and complexity as the Services in this Agreement and with sufficient resources including project management resources;
 - 3.2.2. in compliance in all respects with the Specification and so that the Services fulfil the purpose indicated by or to be reasonably inferred from the Specification; and
 - 3.2.3. in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner.
- 3.3. The Consultant shall use reasonable skill and care to ensure that its design complies with Building Regulations and other statutory and regulatory requirements applicable to the works carried out on the Project.
- 3.4. The Consultant shall comply with its statutory duties under the Construction (Design and Management) Regulations 2015.
- 3.5. No inspection or approval or review by the Authority, or by any person acting on behalf of the Authority, nor any omission to inspect or review or disapprove shall negate or diminish any duty or liability of the Consultant under or in connection with this Agreement.
- 3.6. Without affecting the generality of the rest of this clause, the Consultant shall not specify for use and shall use reasonable diligence to check that others do not specify for use anything in the Project which is Deleterious at the time of specification or use.
- 3.7. The Consultant shall not make any significant alteration to any approved design without the consent of the Authority.
- 3.8. The Consultant may be provided with copies of any agreements between the Authority and third parties concerning the Project and shall not perform its duties to put third parties in breach of such agreements and shall work with such third parties.
- 3.9. The Consultant shall comply with all lawful and reasonable directions of the Authority relating to its performance of the Services.

3.10. Unless he has been specifically authorised to do so by the Authority in writing, the Consultant shall not:

3.10.1. have any authority to incur any expenditure in the name of or for the account of the Authority; or

3.10.2. hold himself out as having authority to bind the Authority.

4. **FEE**

4.1. In consideration of, and subject to the due performance of the Services by the Consultant, the Authority shall pay to the Consultant the Fee in accordance with the procedures set out in **Clause 5**.

4.2. The Consultant is not entitled to reimbursement for expenses.

4.3. All Charges exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice

5. **PAYMENT PROCEDURES AND APPROVALS**

5.1. The Consultant shall invoice the Authority on or after the end of each Payment Period.

5.2. The Consultant shall submit invoices to the Authorised Officer and each invoice shall record all information required by the Authority to check the invoice including that part of the Fee that has fallen due, the service provided, the Authority's Account Details, the Consultant's name and address and a separate calculation of VAT. Invoices shall be clear, concise, accurate, and adequately descriptive to avoid delays in processing subsequent payment.

5.3. In the event of a variation to the Services in accordance with this Agreement that involves the payment of additional fees or charges to the Consultant, the Consultant shall identify these separately on the relevant invoice.

5.4. If the Authority considers that the Charges claimed by the Consultant in any invoice have:

5.5.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System ("**BACS**")) or such other method as the Authority may choose from time to time within 30 days of receipt of such invoice; or

5.5.2 not been calculated correctly and/or if the invoice contains any other error or inadequacy, the Authority shall notify the Consultant and the

Parties shall work together to resolve the error or inadequacy. Upon resolution, the Consultant shall submit a revised invoice to the Authority.

- 5.5. No payment made by the Authority (including any final payment) or act or omission or approval by the Authority or its Authorised Officer (whether related to payment or otherwise) shall:
- 5.5.1. indicate or be taken to indicate the Authority's acceptance or approval of the Services or any part of them or any act or omission of the Consultant, or otherwise prejudice any rights, powers or remedies which the Authority may have against the Consultant or absolve the Consultant from any obligation or liability imposed on the Consultant; or
- 5.5.2. prevent the Authority from recovering any amount overpaid or wrongfully paid including payments made to the Consultant by mistake of law or fact. The Authority shall be entitled to withhold such amount from any sums due or which may become due to the Consultant or the Authority may recover such amount as a debt due under this Agreement.
- 5.6. Where the Consultant enters into a Sub-Contract, the Consultant shall include in that Sub-Contract:
- 5.6.1. provisions having the same effect as **clause 5.3 to clause 5.5** of this Agreement; and
- 5.6.2. a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as **clause 5.3 to clause 5.5** of this Agreement.

In this **clause 5.7**, "**Sub-Contract**" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

6. CONSULTANT'S WARRANTIES

- 6.1. The Consultant warrants and represents that:
- 6.1.1. it has the full capacity and has taken all steps and obtained all approvals and consents required to enable it to lawfully enter into and perform each of its obligations under this Agreement;
- 6.1.2. this Agreement shall be executed by its duly authorised representatives;

- 6.1.3. the information supplied by the Consultant is true and accurate in all material respects;
- 6.1.4. there are no material facts or circumstances in relation to the financial position or operational constitution of the Consultant which have not been fully and fairly disclosed to the Authority and which, if disclosed, might reasonably have been expected to affect the decision of the Authority to enter into this Agreement; and
- 6.1.5. it has not committed any Prohibited Act.

7. CONTRACT MANAGEMENT

- 7.1. The Authority authorises its Authorised Officer to act as its Authorised Representative for all purposes in connection with this Agreement and the Consultant shall deal with the Authorised Officer (or his or her Nominated Representative) in respect of all matters arising under this Agreement.
- 7.2. The Consultant shall appoint a Consultant's Representative who shall be duly authorised for all purposes in connection with this Agreement and the Consultant shall provide the Key Personnel. The Consultant's Representative and the Key Personnel shall:
 - 7.2.1. diligently supervise the performance of the Services;
 - 7.2.2. attend all contract meetings with the Authority the location, frequency and time of may be specified by the Authorised Officer; and
 - 7.2.3. be available to the Authority to resolve any issues arising in connection with this Agreement at such time periods as may be specified by the Authorised Officer.
- 7.3. The Consultant may only make any changes to the Consultant's Representative or Key Personnel (except in the event of sickness, incapacity or resignation) with the prior consent of the Authority which shall not be unreasonably withheld.
- 7.4. No act of or omission by or approval from the Authority or its Authorised Officer in performing any of their respective duties under or in connection with this Agreement shall in any way operate to relieve the Consultant of any its duties, responsibilities, obligations or liabilities under this Agreement.

8. HEALTH AND SAFETY

- 8.1. The Consultant shall have regard to the Authority's Health and Safety policies and safe working practices when preparing its own statements copies of which are available to download on request to the Authority.

- 8.2. Whilst on the Authority's owned premises the Consultant shall require its employees, agents and/or sub-consultants to comply with the reasonable directions and requirements of the Authority's safety advisers.
- 8.3. The Consultant shall nominate a senior manager to be responsible for ensuring that all Health and Safety matters arising from the provision of the Services under this Agreement are dealt with in accordance with the Consultant's approved Health and Safety Policy and the Health and Safety at Work etc., Act 1974.
- 8.4. The Consultant shall conduct the Services so as to eliminate or minimise so far as is reasonably practicable any health and safety risks to members of the public, the Authority's employees and the Contractor's employees and other staff carrying out the Services;
- 8.5. The Consultant shall direct its employees, agents or sub-consultants to comply with the Health and Safety Policy and shall conduct regular reviews and audits of that policy to ensure that the provision of the Services is made in accordance with it. In the event that there are revisions of the Health and Safety Policy these must be notified to the Authority in writing 10 Working Days prior to the proposed alteration to the Health and Safety Policy coming into effect and the Authority shall be entitled to challenge such alteration to the Health and Safety Policy if in its discretion it considers that a change in any way dilutes the minimum standard set out in the Health and Safety Policy.

9. STAFF AND KEY PERSONNEL

9.1. Consultant's Staff

- 9.1.1. The Consultant shall at all times during the Term ensure that its employees engaged in the provision of the Services have sufficient skill and ability and have been properly trained in order to carry out the Services in accordance with this Agreement;
- 9.1.2. The Consultant shall at all times be fully responsible for the payment of full income or other taxes national insurance contributions or levies of any kind relating to or arising out of the employment of any person engaged by the Consultant in the performance of the Services and shall indemnify the Authority in respect of any liabilities which may arise to the Authority as a result of the failure by the Consultant to comply with the obligation in this **Clause 9.1.2**; and
- 9.1.3. The Authority shall be entitled to notify and require the Consultant to discipline or remove from the performance of the Services any

employee of the Consultant engaged in the provision of the Services. The Authority shall not be liable to either the Consultant or to such an employee for any claims arising from any disciplinary action or removal as a result of the Authority's notice to the Consultant and the Consultant shall indemnify the Authority against any such claims.

10. PERFORMANCE AND MONITORING

10.1. Performance Standards

The Consultant shall throughout the Term perform the Services so as to meet the minimum performance standards set out for the Services in **Schedule 3**.

10.2. Review and Monitoring of Performance

The performance of the Services shall be subject to monitoring by the Authority and through the performance management and monitoring procedure which may set out in **Schedule 3** or otherwise agreed between the Authorised Officer and the Consultant's Representative.

11. RECORDS, AUDIT AND INSPECTION

11.1. The Consultant shall and shall procure that its sub-consultants shall:

11.1.1. maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Consultant's obligations under this Agreement and all transactions entered into by the Consultant for the purposes of this Agreement including time-sheets for the Consultant's Personnel where such records are material to the calculation of the Fees and Charges ("**Records**");

11.1.2. retain all Records during the Term and for a period of not less than 6 years (or such longer period as may be required by law) following termination or expiry of this Agreement ("**Retention Period**").

11.2. The Authority and any person nominated by the Authority has the right to audit any and all Records at any time during the Retention Period on giving to the Consultant what the Authority considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Consultant's performance of the Services and the Consultant shall give all reasonable assistance to the Authority or its nominees in conducting such inspection, including making available documents and staff for interview.

12. SET-OFF

The Authority shall be entitled at any time to set off any liability of the Consultant to the Authority against any liability of the Authority to the Consultant.

13. INDEMNITIES

- 13.1. Subject to Clause 13.2, the Consultant is responsible for and shall indemnify, keep indemnified and hold harmless the Authority (including its employees, sub-contractors and agents) (“**the Indemnified Party**”) against all Losses which the Indemnified Party incurs or suffers as a consequence of any direct or indirect breach or any negligent performance of this Agreement by the Consultant (or any of its employees, agents or sub-consultants) including in each case any non-performance or delay in performance of this Agreement or of any breach of statutory duty, misrepresentation or misstatement by the Consultant or any of its employees or sub-consultants.
- 13.2. The Consultant is not responsible for and shall not indemnify the Authority for any Losses to the extent that such Losses are caused by any breach or negligent performance of any of its obligations under this Agreement by the Authority and/or any of its employees or agents.
- 13.3. Notwithstanding any other provision of this Agreement, neither Party limits or excludes its liability for fraud or fraudulent misrepresentation or for death or personal injury caused by its negligence.

14. INSURANCE

- 14.1. The Consultant shall at all times have in force with reputable insurers or underwriters, approved by the Authority, the following insurances for the period of the Term of this Agreement:
 - 14.1.1. Public liability insurance with a limit of indemnity of not less than **£5 million** in relation to any one claim;
 - 14.1.2. Professional indemnity insurance with a limit of indemnity of not less than **£2 million** in relation to any one claim; and
 - 14.1.3. All other insurances required by law.
- 14.2. The Consultant agrees to maintain such insurance at all times until 12 years after the date of practical completion of the works carried out pursuant to a building contract for the Project.
- 14.3. The Consultant shall notify the Authorised Officer as soon as reasonably practicable upon the notification of any event which may give rise to a claim of more than ten thousand pounds (£10,000) sterling.

- 14.4. The Consultant shall, prior to the Commencement Date of this Agreement and thereafter annually, on the anniversary of the Commencement Date and at any other reasonable times as the Authorised Officer may require supply the Authorised Officer with evidence of all of the insurance policies referred to in **clause 14.1**.
- 14.5. In the event that in the opinion of the Authorised Officer any policies of insurance referred to in **Clause 14.1** do not effect sufficient cover to comply with this Agreement then the Authorised Officer shall be entitled to notify the Consultant of the Authority's requirement for the Consultant to effect any such insurances as will ensure that the Consultant complies with its obligation in terms of **Clause 14.1**. Upon receipt of such notice the Consultant shall immediately procure and affect such insurance as notified by the Authorised Officer.
- 14.6. In the event that the Consultant does not affect such insurance the Authority may take out such insurance on behalf of the Authority in which case the Consultant shall pay on demand the cost to the Authority of taking out such insurance.

15. DATA PROTECTION

- 15.1. With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Council is a Data Controller and that the Contractor is a Data Processor.
- 15.2. The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 15.3. The Contractor shall:
- 15.3.1. Process the Personal Data only in accordance with the documented instructions of the Council and only to the extent that is necessary for the provision of the Services or as is required by law or any regulatory body;
 - 15.3.2. not engage a sub-processor to undertake any Processing of any Personal Data without the prior written authorisation of the Council. Where such authorisation is granted by the Council (at its sole discretion), the Contractor shall ensure that it enters into a contract with that sub-processor on the same or equivalent terms as are set out in this **clause**;

- 15.3.3. ensure that persons authorised to Process the Personal Data are aware of and comply with the Contractor's duties under this clause;
- 15.3.4. ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- 15.3.5. ensure that none of the Contractor's employees publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council;
- 15.3.6. ensure that persons authorised to Process the Personal Data have been trained in the use, care, protection and handling of Personal Data;
- 15.3.7. not transfer any Personal Data to any country or territory outside the European Economic Area without the prior written consent of the Council;
- 15.3.8. at the written direction of the Council, delete or return all the Personal Data to the Council after the end of the provision of Services, and delete existing copies, unless the Contractor has a statutory duty to retain that Personal Data. If the Contractor believes that it does have such a statutory duty, this should be notified to the Council in writing at least three (3) months prior to the expiry or termination (whichever is earlier) of this Agreement;
- 15.3.9. assist the Council by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Council's obligation to respond to Subject Access Requests, as well as providing all assistance and cooperation as the Council may require to investigate or deal with any such Subject Access Requests;
- 15.3.10. ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data;
- 15.3.11. insofar as this is possible given the nature of Processing and the information available to the Contractor, assist the Council in ensuring compliance with its obligations pursuant to the Data Protection Legislation;

- 15.3.12. notify the Council of any actual or potential Personal Data Breach within 24 hours of its occurrence (or, in the case of a potential breach, the Contractor becoming aware of such breach), along with all supporting facts and information sufficient to allow the Council to make any required report(s) to any relevant Data Subjects, the Information Commissioner or other regulatory or governmental body or bodies to which it is subject;
- 15.3.13. notify the Council immediately if it receives:
- a) a request from a Data Subject to have access to that person's Personal Data;
 - b) a request to rectify, block or erase Personal Data;
 - c) any communication from the Information Commissioner or any other regulatory authority;
 - d) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
 - e) a complaint or request relating to the Council's in connection with obligations under the Data Protection Legislation;
- 15.3.14. provide the Council with full cooperation and assistance in relation to any complaint or request made, including by:
- a) providing the Council with full details of the complaint or request;
 - b) complying with a Subject Access Request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Council's instructions;
 - c) providing the Council with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Council); and
 - e) providing the Council with information requested by the Council;
- 15.3.15. make available to the Council, at reasonable intervals and within twenty one (21) days following a request for such, all information necessary to demonstrate compliance with the obligations laid down in the Data Protection Legislation and allow for and contribute to audits, including inspections, conducted by the Council or another auditor mandated by the Council.
- 15.4. The Contractor shall indemnify and keep indemnified the Council against all demands, actions, proceedings, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by it in respect of any breach of this **clause** by the Contractor and/or any act or omission of any Sub-Contractor appointed by the Contractor.

- 15.5. The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation.
- 15.6. The provisions of this **clause** shall apply during the continuance of the Agreement and indefinitely after its termination.
- 15.7. In the event of conflict between any provision in the Agreement and this clause the provisions of this clause shall take precedence.

16. INTELLECTUAL PROPERTY RIGHTS

- 16.1. The Consultant acknowledges the Authority's ownership of Intellectual Property Rights which may subsist in the Authority's Data. The Consultant shall not delete or remove any copyright notices contained within or relating to the Authority's Data.
- 16.2. The Consultant hereby assigns with full title guarantee to the Authority all Intellectual Property Rights in all designs, drawings, details, plans, computer software and other documents and data produced for the purposes of this Agreement ("the Products") provided that such assignment shall not include items not prepared or developed specifically for the purposes of providing the Services.
- 16.3. For no additional fee, the Consultant shall provide the Authority and its other consultants with copies of the Products to enable them to carry out their functions under the Project.

17. CONFIDENTIALITY

- 17.1. Subject to **Clauses 15 and 17.6**, the Consultant shall keep confidential:
- 17.1.1. the terms of this Agreement and any agreed variation thereto; and
 - 17.1.2. all Confidential Information that it may acquire in relation to the Authority.
- 17.2. The Consultant will not use the Authority's Confidential Information for any purpose other than to perform its obligations under this Agreement. The Consultant will ensure that its officers and employees and sub-consultants will comply with the provisions of **Clause 17.1**.
- 17.3. The obligations of the Consultant set out in **Clause 17.1** shall not apply to any Confidential Information which:
- 17.3.1. either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this **Clause 17**); or

- 17.3.2. a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure.
- 17.4. The Consultant shall keep secure all data and materials containing any information in relation to the Agreement and its performance.
- 17.5. The Consultant shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of the Agreement or that it is providing the Services to the Authority or in relation to any matter under or arising from the Agreement unless granted consent in writing by the Authority. The Authority shall have the right to approve any public announcement before it is made.
- 17.6. The Authority may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing, and in its absolute discretion, the Authority may take account of the exemptions that would be available in relation to information requested under the FOI Legislation. The Authority may, in its absolute discretion, consult with the Consultant regarding any redactions to the Contract Information to be published pursuant to this **Clause 17.6**. The Authority shall make the final decision regarding publication and/or redaction of the Contract Information.

18. FREEDOM OF INFORMATION

- 18.1. The Consultant acknowledges that the Authority:
- 18.1.1. is subject to the FOI Legislation and agrees to assist and co-operate with the Authority to enable the Authority to comply with its obligations under the FOI Legislation; and
 - 18.1.2. may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Consultant.
- 18.2. Without prejudice to the generality of **Clause 18.1**, the Consultant shall and shall procure that its sub-consultants (if any) shall:
- 18.2.1. transfer to the Authorised Officer (or such other person as may be notified by the Authority to the Consultant) each Information Request relevant to this Agreement or the Services that it or they (as the case may be) receive as soon as practicable and in any event within two Working Days of receiving such Information Request; and
 - 18.2.2. in relation to Information held by the Consultant on behalf of the Authority, provide the Authority with details about and/or copies of all such Information that the Authority requests and such details and/or copies shall be provided within 5 Working Days of a request

from the Authority or such other period and in such forms as the Authority may reasonably specify.

- 18.3. The Authority shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. The Consultant shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Authority.

19. TERMINATION

- 19.1. Without affecting any other right or remedy available to it, the Authority may terminate this Agreement on giving not less than 1 month's written notice to the Consultant.
- 19.2. Without prejudice to the Authority's right to terminate at common law, the Authority may terminate this Agreement immediately upon giving notice to the Consultant, if the Consultant:
- 19.2.1. has committed any material or persistent breach of this Agreement and, in the case of such a breach that is capable of remedy fails to remedy that breach within ten Working Days (or such other period as specified in writing by the Authority) from the date of written notice to the Consultant giving details of the breach and requiring it to be remedied; or
 - 19.2.2. is subject to an Insolvency Event; or
 - 19.2.3. commits a breach of **Clause 6** (Consultant's Warranties); or
 - 19.2.4. commits a breach of **Clause 17** (Confidentiality); or
 - 19.2.5. commits a Prohibited Act; or
 - 19.2.6. commits a breach of **Clause 31** (Assignment, Sub-contracting and Change of Ownership).

20. FORCE MAJEURE

- 20.1. Neither Party shall be in breach of any obligation under this Agreement if it is unable to perform that obligation in whole or in part by reason of a Force Majeure Event.
- 20.2. If either Party seeks to rely on this Clause it shall immediately give notice to the other with full particulars of the act or matter claimed as a Force Majeure Event. The Party so affected shall take all reasonable steps to remedy the

failure to perform and to keep the other Party informed of the steps being taken to mitigate the effects of the Force Majeure Event.

- 20.3. Without prejudice to any accrued rights or remedies, if a Force Majeure Event lasts for more than 30 Working Days either Party may, following consultation with the other Party, give notice of termination of this Agreement.

21. CONSEQUENCES OF TERMINATION

- 21.1. In the event that the Authority terminates this Agreement in accordance with **Clause 19.1**, then the Consultant shall indemnify the Authority in respect of procuring the performance of the Services by a Replacement Consultant in accordance with **Clause 21.2**.
- 21.2. On termination of this Agreement under **Clause 22.1**, the Authority may enter into any agreement with any third party or parties to provide any or all of the Services and the Consultant shall be liable for all additional expenditure ("**Costs**") reasonably incurred by the Authority in having such services carried out including, but not limited to, direct loss and expense, legal and other costs and damages incurred in consequence of such termination. The Authority may deduct such Costs from the Fees and Charges or otherwise recover such Costs from the Consultant as a debt due.

22. CONSEQUENCES OF TERMINATION AND EXPIRY

- 22.1. Upon termination, the Consultant shall continue to provide the Services in accordance with the terms of this Agreement and will ensure that there is no degradation in the standards of the Services until the expiry of the termination period and, for a reasonable time thereafter, shall answer such questions from the Authority's Authorised Officer as may be relevant to the transfer of the Services to a Replacement Consultant.
- 22.2. Notwithstanding the provisions of **Clause 17** (Confidentiality) whenever the Authority chooses to put out to tender for a replacement consultant some or all of the Services, the Consultant shall disclose to tenderers such information concerning the Services as the Authority may require for the purposes of such tender. The Consultant may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.
- 22.3. The termination or expiry of this Agreement shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to the Parties prior to or after such termination or expiry.
- 22.4. Upon termination (howsoever caused) or expiry of this Agreement:

- 22.4.1. the Consultant shall at the request of the Authority immediately return to the Authorised Officer all information (including but not limited to data (including personal data), data bases, lists, correspondence, documents, specifications) and property) belonging to the Authority which may be in its possession, custody or control as acquired or developed in connection with the performance of the Services; and
- 22.4.2. the Authority shall (subject to its accrued rights of set off and deduction) pay the Consultant any Fees or Charges remaining due in relation to any Services properly performed in accordance with this Agreement up to the date of termination or expiry calculated so far as is possible in accordance with **Clause 5** or as otherwise reasonably determined by the Authority.

23. DISPUTE RESOLUTION

- 23.1. Subject to either party's right to adjudicate at any time, the Authority and the Consultant shall use all reasonable endeavours to resolve any dispute or difference ("**Dispute**") that may arise out of or relate to this Agreement.
- 23.2. If the Dispute is not settled through discussion between the Authorised Officer and a representative of the Consultant within a period of 10 Working Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) ("**Senior Personnel**") of each of the Parties for resolution.
- 23.3. If the Dispute is not resolved within 20 Working Days of referral to the Senior Personnel, either Party may apply to the Centre for Effective Dispute Resolution ("**CEDR**") in London to appoint a Mediator. The costs of the Mediator shall be borne equally by the Parties.
- 23.4. Where a Dispute is referred to mediation under **Clause 21.3**, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedure as the Mediator may recommend.
- 23.5. If the Parties reach agreement in mediation, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.
- 23.6. If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Working Days of the service of the Mediation Notice either Party may commence proceedings in the High Court.

- 23.7. Unless otherwise instructed by the Authority, the Consultant shall continue to provide the Services in accordance with this Agreement without delay or disruption while the Dispute is being resolved pursuant to this **Clause 23**.
- 23.8. Neither Party shall be prevented from seeking any order for specific performance or injunctive relief as a result of the provisions of this **Clause 23** which shall not apply to any dispute where these or any other equitable remedies are sought.
- 23.9. Notwithstanding any other provision of this Agreement either party may refer a dispute arising under this agreement to adjudication at any time under Part 1 of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended) which Part shall take effect as if it was incorporated into this clause.
- 23.10. The adjudicator shall be nominated by Royal Institute of British Architects.

24. SUSTAINABILITY

The Consultant shall make arrangements to secure continuous improvement in the way in which the Services are provided having regard to a combination of economy, efficiency and effectiveness and shall assist the Authority in discharging its Best Value Duty in relation to the Services and either Party may propose alternative methods for the improvement of the economy, efficiency and environmental aspects of the Services or the introduction of or change in any information technology in use to support the provision of the Services and the Parties will co-operate to evaluate and, if appropriate, introduce such proposals as a variation of this Agreement.

25. EQUALITY

- 25.1. The Consultant is required to have in place an equal opportunities (Equalities) policy at the Commencement Date of this Agreement and throughout the Term. This policy must specify that the Consultant will not treat its employees less favourably on the grounds of their colour, race, ethnic, or national origin, nationality (including citizenship), marital status, marriage and civil partnership, pregnancy and maternity, sex, sexual orientation, age, religion or belief or because they have a disability.
- 25.2. The Consultant shall take all reasonable steps to secure that all of its employees do not unlawfully discriminate and comply with the Consultant's obligations under **Clause 25.1**.

- 25.3. In the performance of the Services and in its dealings with service users, the Authority's employees and members of the general public the Consultant shall comply and shall ensure that its employees comply with:
- 25.3.1. the Human Rights Act 1998 as if the Consultant was a public body (as defined in the Human Rights Act 1998);
 - 25.3.2. all law relating to equal opportunities including without limitation relating to disability, discrimination, sex discrimination, and race relations; and
 - 25.3.3. the Authority's equal opportunities ("**Equalities**") policies and procedures as may be adopted and amended from time to time and as notified to the Consultant.

26. MODERN SLAVERY

The Contractor shall comply with the provisions of the Modern Slavery Act 2015.

27. PREVENT

- 27.1. The Consultant shall ensure their employees and agents have a good understanding of the need to prevent people being drawn into terrorism;
- 27.2. In the event of there being a concern about a person, notify the Authority.

28. WAIVER

- 28.1. No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of **Clause 34** (Notices). The single or partial exercise of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.
- 28.2. The rights of each Party under this Agreement may be exercised as often as that Party considers appropriate, are cumulative and apply in addition to their rights under the general law and may be waived only in writing and specifically. Not exercising or delay in exercising any right is not a waiver of that right.

29. SEVERABILITY

- 29.1. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the proper law of this Agreement that

shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement and the other terms and provisions of this Agreement shall remain valid and enforceable so long as the legal substance of the transactions contemplated thereby is not affected in any manner adverse to any Party.

- 29.2. Upon the determination by a court of competent jurisdiction that any provision is invalid, illegal or unenforceable the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated thereby are fulfilled to the fullest extent possible.

30. THIRD PARTY RIGHTS

No third party or other person who is not a Party to this Agreement may enforce any of its terms under the Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 which is hereby expressly excluded.

31. NO AGENCY OR PARTNERSHIP

Nothing in this Agreement constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in this Agreement, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

32. PREVENTION OF BRIBERY

- 32.1. The Consultant represents and warrants that neither it, nor to the best of its knowledge any Consultant's Personnel, have at any time prior to the Commencement Date:

32.1.1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

32.1.2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

- 32.2. The Consultant shall not during the term of this Agreement:

32.2.1. commit a Prohibited Act; and/or

32.2.2. do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-

contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

- 32.3. The Consultant shall during the term of this Agreement:
- 32.3.1. establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
 - 32.3.2. keep appropriate records of its compliance with its obligations under **Clause 32.3.1** and make such records available to the Authority on request.
- 32.4. The Consultant shall immediately notify the Authority in writing if it becomes aware of any breach of **Clause 32.1 and/or Clause 32.2**, or has reason to believe that it has or any of the Consultant's Personnel have:
- 32.4.1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 32.4.2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 32.4.3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 32.5. If the Consultant makes a notification to the Authority pursuant to **Clause 32.4**, the Consultant shall respond promptly to the Authority's enquiries, cooperate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with **Clause 11** (Records, Audit and Inspection).
- 32.6. If the Consultant is in Default under **Clause 32.1 and/or Clause 32.2**, the Authority may by notice:
- 32.6.1. require the Consultant to remove from performance of this Agreement any Consultant's Personnel whose acts or omissions have caused the Default; or
 - 32.6.2. immediately terminate this Agreement.
- 32.7. Any notice served by the Authority under **Clause 32.6** shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has

committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

33. SURVIVAL OF TERMS

The provisions of this Agreement shall be binding on any successors of the Parties. Nothing in this Agreement shall affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication to come into force or continue in force upon termination or expiry of this Agreement.

34. NOTICES

34.1. Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, post or email and if by post must be addressed to the recipient at its registered office, the address stated in at the beginning of this Agreement or any other address (including an email address) notified to the other Party in writing in accordance with this **Clause 34** as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:

34.1.1. if delivered by hand, at the time of delivery;

34.1.2. if delivered by post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays); or

34.1.3. if delivered by email, at the time of transmission, provided that a confirming copy is sent by first class post to the other Party or Parties within 24 hours after transmission.

35. AUTHORITY'S STANDING ORDERS

35.1. The Consultant shall comply with all the requirements of the Authority's constitution and/or standing orders for the time being enforced which are available for inspection during normal working hours by prior appointment with the Authorised Officer at the Authority's normal address.

35.2. Notwithstanding anything to the contrary in this Agreement, the Authority's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Agreement.

36. ASSIGNMENT, SUB-CONTRACTING AND CHANGE OF OWNERSHIP

- 36.1. The Consultant shall not assign or sub-contract all or any part of the Services without the prior written consent of the Authority.
- 36.2. Where the Consultant sub-contracts all or any part of the Services to any person, the Consultant shall:
- 36.2.1. ensure that such person is obliged to comply with all of the obligations and duties of the Consultant under this Agreement insofar as they relate to the Services or part of them (as the case may be) which that sub-consultant is required to provide;
 - 36.2.2. be responsible for payments to that person; and
 - 36.2.3. remain solely responsible and liable to the Authority for any breach of performance, non-performance, part-performance or delay in performance of any of the Services by any sub-consultant to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Consultant; and
 - 36.2.4. ensure the sub-contractor has the same insurance cover as is required of the Consultant in **clause 14 (Insurance)** (unless the prior written approval of the Council is obtained).
- 36.3. The Consultant shall:
- 36.3.1. not without the prior written consent of the Authority undergo any change in the ownership of the Consultant where such change relates to 50% or more of the issued share capital of the Consultant; and
 - 36.3.2. give notice to the Authority in the event that there is any change in the ownership of the holding company where such change relates to 50% or more of the issued share capital of the holding company, such notice to be given within ten Working Days of the date on which such change takes effect.
- 36.4. The Authority may assign, novate or otherwise transfer this Agreement (in whole or in part) without the consent of the Consultant.
- 36.5. Within ten Working Days of a written request from the Authority, the Consultant shall at its own expense execute such agreement as the Authority or and/or may reasonably require to give effect to any such transfer of all or part of the rights and obligations under this Agreement to one or more persons nominated by the Authority.

37. VARIATION

- 37.1. This Agreement may only be varied or amended with the written agreement of both Parties to this Agreement.
- 37.2. Where the Authority and the Consultant wish to vary or amend the Services the details of any variations or amendments shall be set out in the form at **Schedule 4** and such variation or amendment shall not be binding upon the Parties unless the form is completed and executed by the duly authorised representatives of the Authority and the Consultant.
- 37.3. If additional services are required the fee for the additional services shall be calculated on the basis of the Schedule of Rates set out in **Schedule 5** save that the Consultant shall not be entitled to any additional remuneration for services provided or costs incurred if the necessity for the same results from the Consultant's default.
- 37.4. Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of this Agreement.

38. COSTS

Each Party will pay its own charges, costs and expenses in the performance of its own obligations in this Agreement and the negotiation, preparation and execution of this Agreement.

39. ENTIRE AGREEMENT

39.1. Subject to Clause 39.2:

39.1.1. this Agreement and any and all documents referred to in this Agreement contain all of the terms which the Parties have agreed relating to the subject matter of this Agreement which shall supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. No Party has been induced to enter into this Agreement by a statement which it does not contain; and

39.1.2. without prejudice to the Consultant's obligations under this Agreement, the Consultant is responsible for and shall make no claim against the Authority in respect of any misunderstanding affecting the basis of the Consultant's tender in respect of this Agreement or any incorrect or incomplete information howsoever obtained.

39.2. Nothing in this **Clause 39** excludes any liability which a Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

40. GOVERNING LAW AND JURISDICTION

40.1. 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.

40.2. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS whereof this Agreement has been executed by the Parties as a Deed the day and year first before written.

SCHEDULE 1

SUMMARY OF KEY AGREEMENT INFORMATION

1. Name of Consultant: **[add name of contractor]**
2. Commencement Date: **[add]**
3. Estimated Expiry Date: **[add]**
4. Fee: **£[add]**
5. Payment Periods: **monthly/quarterly/ stage payments to be made in accordance with the following table:**

6. Services: means **add type of service** services provided by the Consultant in connection with the Project as more particularly described in the Specification.

7. The Authorised Officer: [add]

Name:

Address:

Tel:

Email:

8. The Consultant's Representative: [add]

Name and Position:

Address:

Tel:

Email:

9. The Consultant's Key Personnel, if any: [add]

Name and Position:

Address:

Tel:

Email:

SCHEDULE 2
Specification

Add

SCHEDULE 3

Tender Information including quote/tender and letter of acceptance, if any.

Add

DRAFT

SCHEDULE 4
Variation Form

Variation Number: *[to be inserted]*

Agreement dated **[add date]**

made between (1) Swale Borough Council and (2) [add name of contractor]s

Authority's Contact/Authorised Officer:

Name: *[to be inserted]*

Telephone: *[to be inserted]*

Email: *[to be inserted]*

Date: *[to be inserted]*

AUTHORITY FOR VARIATION TO THE SERVICES AND/OR CHARGES

Pursuant to **clause 37.2 (Variation)** of the Agreement, authority is given for the variation to the Services and/or the Fee. This form must be signed by the Consultant and returned to the Authorised Officer to confirm agreement of the variation shown below.

DETAILS OF VARIATION	AMOUNT (£)
ALLOWANCE TO THE AUTHORITY	
EXTRA COST TO THE AUTHORITY	
TOTAL	

.....
Signed for and on behalf the Swale Borough Council

Name:

Job Title:

.....
Signed for and on behalf of the Consultant

Name:

Job Title:

SCHEDULE 5
Schedule of Rates

Add

DRAFT

The Common Seal of)
SWALE BOROUGH COUNCIL)
was hereunto affixed)
in the presence of:)

Solicitor/Authorised Officer

SIGNED and DELIVERED by)
[add name of contractor])
in the presence of:)

Director

Director/Company Secretary

DRAFT