

**DATE**

**3rd of October 2023**

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**THE DISTRICT COUNCIL OF FOLKESTONE & HYTHE**

**- and -**

**MODUS CONSTRUCTION CONSULTANTS LIMITED**

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**CONTRACT FOR THE SUPPLY OF CONSULTANCY SERVICES FOR  
COAST DRIVE COASTAL DESTINATION COST CONSULTANT / EMPLOYERS AGENT**

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**THIS AGREEMENT** is made the 3<sup>rd</sup> day of October 2023

**BETWEEN**

- (1) **THE DISTRICT COUNCIL OF FOLKESTONE & HYTHE** of the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY ("**the Client**") **AND**
- (2) **MODUS CONSTRUCTION CONSULTANTS LIMITED** (company registration no. 08382904) whose registered office is at 3 Jubilee Way, Faversham, Kent, England, ME13 8GD ("**the Consultant**")

hereinafter collectively called "**the Parties**" and independently called "**the Party**"

**WHEREAS**

The Client wishes to appoint the Consultant as **Cost Consultant / Employer's Agent** in connection with **Coast Drive Coastal destination** and the Consultant has agreed to provide the Services for the Project on the terms set out in this Agreement.

**IT IS HEREBY AGREED** as follows:

1. This Agreement incorporates and includes each of the following documents and constitutes the entire agreement between the Parties relating to the supply of the Services:
  - Part 1 – Contract Details
  - Part 2 – Fee Schedule
  - Part 3 – Conditions
  - Part 4 – Definitions and Interpretation
  - Part 5 – Rights of Interested Parties
  - Part 6 – Optional Provisions (as specified in § 1–13)
  - Part 7 – The Services (to be annexed)

§ the Client's Schedule of Amendments to the CIC Consultants' Contract Conditions ("Schedule of Amendments") to Part 3 and Part 4 of the Schedule, which, together with these Articles of Agreement, shall prevail over any of the other documents referred to herein;

§ Any relevant correspondence between the Parties.

2. In consideration of the provision of the Services by the Consultant, the Client agrees to pay the Consultant the Fee at the times and in the manner set out in this Agreement. The Fee shall be **£28,410.00**.
3. In consideration of the payments to be made by the Client to the Consultant in accordance with Clause 2 of this Agreement, the Consultant agrees to deliver the Services in compliance in all respects with the provisions of this Agreement.
4. The Consultant shall indemnify and hold harmless the Client against any liability which the Client may incur to any person whatsoever and against any claims, demands, costs and/or expenses sustained, incurred or payable by the Client to the extent that the same arises by reason of any breach of this Agreement or an instruction or any tortious or negligent act or omission on the Consultant's part (and/or any third party to whom the Consultant has subcontracted the performance of the Consultant's obligations or part thereof) in the performance of the Consultant's obligations under and in connection with this Agreement.
5. Nothing in the Contracts (Rights of Third Parties) Act 1999 shall entitle a person who is not a party to this Agreement to enforce any term of the Agreement.
6. For the avoidance of doubt the provisions of this Agreement shall be construed and interpreted according to the laws of England and for the purpose of any steps to be taken by the Client to enforce the Consultant's obligations under this Agreement or any of them the Consultant hereby submits to the jurisdiction of the Courts of Law of England.



**IN WITNESS** whereof the Parties have executed this Agreement under hand on the day and year first above written

**FOR AND ON BEHALF of  
THE DISTRICT COUNCIL OF FOLKESTONE & HYTHE**



Authorised Officer

**FOR AND ON BEHALF of  
MODUS CONSTRUCTION CONSULTANTS LIMITED**

|                 |  |
|-----------------|--|
| <b>Director</b> | Signature            |
|                 | Name IN CAPITALS<br> |

# SCHEDULE

This is the Schedule in seven Parts referred to in the Articles of Agreement between

**THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE** (the Client)

and

**MODUS CONSTRUCTION CONSULTANTS LIMITED** (the Consultant)

The commencement date of this Agreement shall be **11<sup>th</sup> of September 2023** and will continue for a period of 15 months, terminating on **10<sup>th</sup> of December 2024**, (with the option to extend for a further period (or periods) of up to 3 months), unless otherwise extended upon the mutual agreement in writing of each of the Parties.

## PART 1 – CONTRACT DETAILS

1-1 The Site is situated at

..... Coast Drive, Greatstone, New Romney, TN28 8NR .....

1-2 The Client Brief (§3-2.1) is the document so entitled dated

Appendix A - Specification  
.....

1-3 The Client's authorised representative (§3-6.5) is

.....  
[REDACTED]

1-4 The limits of authority of the Client's authorised representative (§3-6.5) are as follows:

.....

1-5 The Consultant's Representative (§3-7.1) is

.....

The Key Personnel (§3-7.2) are

[REDACTED]

[REDACTED]

[Redacted]

.....  
.....

**1-6 The Project Team includes the following Consultants and Specialists undertaking the following roles:**

**1-6.1 Project Lead**

[Redacted]

.....

**1-6.2 Design Lead**

.....

**1-6.3 Architectural Design**

.....

**1-6.4 Civil and Structural Design**

.....

**1-6.5 Building Services Design**

.....

**1-6.6 Cost Consultancy**

.....

**1-6.7 Health and Safety Consultancy / CDM Co-ordinator**

.....

**1-6.8 Landscape Architectural Design**

.....

**1-6.9 Others**

**1-7 The Interested Parties who are to receive third party rights pursuant to the Contracts (Rights of Third Parties) Act 1999 common law principle of third party rights (*jus quaesitum tertio*)] (§3-5.1 and §3-5.1S) are:**

- any person who agrees to provide finance to the Client in connection with the carrying out of the Project;
- any purchaser from the Client of the Project or any part of it (up to a maximum of ..... in number);
- any first tenant of the Project or any part of it (up to a maximum of..... in number);
- any freehold or superior leasehold owner of the Site or any part of it; and
- any company which is a subsidiary, or holding company, or another subsidiary of a holding company of the Client ('subsidiary' and 'holding company' having the meanings given to them in the Companies Act 2006 (as amended)).

**1-8 The minimum level of professional indemnity insurance (§3-10.1) is:**

- £2,000,000 in the annual aggregate for claims arising out of or in connection with pollution, contamination and any other matter for which insurance is only available on an annual aggregate basis at the time of each renewal;
- for all other claims, £2,000,000 for each and every claim or series of claims arising out of one originating cause.

**1-9 The aggregate limit of the Consultant's liability to the Client and any Interested Party under §3-17 is £2,000,000**

**Within this limit an aggregate limit of £2,000,000 shall apply in relation to claims arising out of or in connection with the presence of asbestos (or any product or waste that contains asbestos) on the Site.**

**1-10 The Client's address for the delivery of notices (§3-18.2) is:**

**The Civic Centre  
Castle Hill Avenue  
Folkestone,  
Kent CT20 2AD**

.....  
**1-11 The Consultant's address for the delivery of notices (§3-18.2) is:**

.....

**1-12 The adjudicator (§3-19.2) shall be appointed by:**

- Association for Consultancy and Engineering
- Construction Industry Council
- Chartered Institute of Arbitrators
- Chartered Institute of Building
- Institution of Civil Engineers
- Royal Institute of British Architects
- Royal Institution of Chartered Surveyors
- Technology and Construction Solicitors' Association.

**If nobody is selected, the adjudicator shall be appointed by the Construction Industry Council.**

**1-12S The adjudicator (§3-19.2) shall be appointed by:**

- Association for Consultancy and Engineering
- Construction Industry Council
- Chartered Institute of Arbitrators (Scottish Branch)
- Chartered Institute of Building
- Institution of Civil Engineers (Scottish Branch)
- Law Society of Scotland
- Royal Incorporation of Architects in Scotland
- Royal Institution of Chartered Surveyors (Scottish Branch).

**If nobody is selected, the adjudicator shall be appointed by the Construction Industry Council.**

**1-13 The optional provisions in Part 6 which are to form part of this contract are Paragraphs 6.1 to 6.4 inclusive, in each case to the extent they are applicable to the Services.**

.....23

**1-14 The limits of the Consultant's financial authority (§6-2.1.3.2) are £ .....per item and £ ..... in the aggregate.**



## **PART 2 – FEE SCHEDULE**

### **2-1 The Fee**

2-1.1 Lump sum: The Fee shall be the lump sum of **£28,410.00**

2-1.2 Percentage: The Fee shall be .....NA..... per cent of the Construction Cost.

Until the Construction Cost is known, the Cost Consultancy Consultant's latest estimate of such cost shall serve as the Construction Cost.

2-1.3 Time charge: The Fee shall be calculated on the basis of the time properly and necessarily spent by employees, agents and sub-consultants of the Consultant in performing the Services at the time charge rates set out in §2-4.1.

2-1.4 Other:

### **2-2 Expenses and disbursements**

The expenses and disbursements referred to in §3-8.2 shall be:

### **2-3 Instalment payments**

The instalments referred to in §3-8.3 shall be as follows:

**Instalment date, stage or milestone** **amount or % or time**

| <b>PROJECT STAGE / ACTIVITY</b>  | <b>% of TOTAL FEE</b> | <b>NET AMOUNT PAYABLE</b> |
|--|-----------------------|---------------------------|
| Preparation of cost plan, tender and contract documentation.   | 20%                   | £5,682.00                 |
| Tender process through to the appointment of contractor and including completing contract documents. | 10%                   | £2,841.00                 |
| Works stages to practical completion.  | 65%                   | £18,466.50                |
| Making Good Defects certificate, Final Certificate and Final Account                                 | 5%                    | £1,420.50                 |

### **2-4 Related provisions**

2-4.1 Where time charges are to apply to the performance of the Services and any Additional Services and/or adjustment to the Fee under §3-9 the following time charge rates shall apply:

Person/grade

rate per (hour/day)

| RESOURCE | GRADE / JOB TITLE | DAILY RATE (£) |
|----------|-------------------|----------------|
|          | Project Director  |                |
|          | Project Lead      |                |
|          | Project Assistant |                |

These rates shall be adjusted on ..... in each year after the date of this contract in accordance with

2-4.2 The resource-based breakdown of the Fee (to be used only for the purpose of §3-16.2.1) shall be as follows:

Stage

amount or % of Fee

| Work Stages  | ACTIVITY                                   | RESOURCE        | GRADE / JOB TITLE | DAILY RATE (£) | DAYS TO COMPLETE | SUBTOTAL (£) | STAGE TOTAL (£) |
|--|--|-----------------|-------------------|----------------|------------------|--------------|-----------------|
| Preparation of initial cost plan, tender and contract documentation.                                 | Site Visit                                 | Michael Hoggart | Project Director  |                | 0.30             |              |                 |
|  | Site Visit                                 | Tom Trew        | Project Lead      |                | 0.30             |              |                 |
|  | Attend virtual design team meetings        | Michael Hoggart | Project Director  |                | 0.40             |              |                 |
|  | Attend virtual design team meetings        | Tom Trew        | Project Lead      |                | 0.40             |              |                 |
|  | Cost Plan                                  | Michael Hoggart | Project Director  |                | 0.25             |              |                 |
|  | Cost Plan                                  | Tom Trew        | Project Lead      |                | 2.00             |              |                 |
|  | Cost Plan                                  | Ben Thornby     | Project Assistant |                | 3.00             |              |                 |
| Tender process through to the appointment of contractor and including completing contract documents. | General advice and administration          | Tom Trew        | Project Lead      |                | 1.00             |              |                 |
|  | Attend virtual design team meetings        | Tom Trew        | Project Lead      |                | 0.40             |              |                 |
|  | Prepare tender document including prelims  | Tom Trew        | Project Lead      |                | 2.00             |              |                 |
|  | Prepare pricing schedule                   | Tom Trew        | Project Lead      |                | 0.25             |              |                 |
|  | Prepare pricing schedule                   | Ben Thornby     | Project Assistant |                | 1.00             |              |                 |
|  | General advice and administration          | Tom Trew        | Project Lead      |                | 1.00             |              |                 |
|  | Tender analysis and report                 | Michael Hoggart | Project Director  |                | 0.2              |              |                 |
|  | Tender analysis and report                 | Tom Trew        | Project Lead      |                | 2                |              |                 |
|  | Tender analysis and report                 | Ben Thornby     | Project Assistant |                | 2                |              |                 |
|  | Post Tender Interviews                     | Tom Trew        | Project Lead      |                | 1                |              |                 |
|  | Preparing contracts                        | Tom Trew        | Project Lead      |                | 1                |              |                 |
|  | Preparing contracts                        | Ben Thornby     | Project Assistant |                | 1                |              |                 |
|  | Pre Start Meeting and minutes              | Tom Trew        | Project Lead      |                | 0.5              |              |                 |
|  | Pre Start Meeting and minutes              | Ben Thornby     | Project Assistant |                | 0.5              |              |                 |
| Works stages to practical completion.  | General advice and administration          | Tom Trew        | Project Lead      |                | 1                |              |                 |
|  | Attend progress meetings and minutes       | Tom Trew        | Project Lead      |                | 5                |              |                 |
|  | Attend progress meetings and minutes       | Ben Thornby     | Project Assistant |                | 6                |              |                 |
|  | Monthly valuations                         | Tom Trew        | Project Lead      |                | 1                |              |                 |
|  | Monthly valuations                         | Ben Thornby     | Project Assistant |                | 2.5              |              |                 |
|  | Monthly financial reports                  | Tom Trew        | Project Lead      |                | 1                |              |                 |
|  | Monthly financial reports                  | Ben Thornby     | Project Assistant |                | 2.5              |              |                 |
|  | Dealing with variations                    | Tom Trew        | Project Lead      |                | 1                |              |                 |
|  | Dealing with variations                    | Ben Thornby     | Project Assistant |                | 5                |              |                 |
|  | Issuing contract notices/EoT reviews       | Tom Trew        | Project Lead      |                | 1                |              |                 |
|  | Issuing contract notices/EoT reviews       | Ben Thornby     | Project Assistant |                | 5                |              |                 |
|  | Monthly EA reports                         | Tom Trew        | Project Lead      |                | 1                |              |                 |
|  | Monthly EA reports                         | Ben Thornby     | Project Assistant |                | 2.5              |              |                 |
|  | General advice and administration          | Tom Trew        | Project Lead      |                | 10               |              |                 |
|  | General advice and administration          | Ben Thornby     | Project Assistant |                | 5                |              |                 |
|  | Assisting in snagging and handover process | Tom Trew        | Project Lead      |                | 0.5              |              |                 |
|  | Chair handover meeting                     | Tom Trew        | Project Lead      |                | 0.5              |              |                 |
| Issue Practical Completion   | Tom Trew                                   | Project Lead    |                   | 0.25           |                  |              |                 |
| Making Good Defects certificate, Final Certificate and Final Account.                                | Agreement of final account                 | Tom Trew        | Project Lead      |                | 1                |              |                 |
|  | Agreement of final account                 | Ben Thornby     | Project Assistant |                | 3                |              |                 |
|  | Making Good Defects Certificate            | Tom Trew        | Project Lead      |                | 0.25             |              |                 |
|  | Final Certificate                          | Tom Trew        | Project Lead      |                | 0.25             |              |                 |

|                  |                   |                   |
|------------------|-------------------|-------------------|
| <b>TOTAL (£)</b> | <b>£28,410.00</b> | <b>£28,410.00</b> |
|------------------|-------------------|-------------------|

# **CIC Consultants' Contract Conditions ("Schedule of Amendments")**

## **PART 3 – CONDITIONS**

### **Consultant's obligations**

Insert Clause 3-1.6 as follows:

- “3-1.6A** The Consultant shall fully carry out the Services with due skill, care, expedition and efficiency to be expected of a properly qualified and competent Consultant who is experienced in carrying out work of a similar scope, nature and complexity and size to the Services.
- 3-1.6B** The Consultant shall work in a proper and workmanlike manner and fully in accordance with the Contract Administrator's instructions, any instructions of the Client, the Contract Documents and other Statutory Requirements and shall give all notices required by the Statutory Requirements.
- 3-1.6C** The Consultant shall take due account of the terms of any agreements between the Client and third parties as are from time to time disclosed to him and shall perform his obligations under this Contract in such a manner as not to constitute, cause or contribute to any breach by the Client of his obligations under such agreements and shall indemnify the Client in respect of any loss and/or damage which he incurs as a result of any breach by the Consultant of this clause where such loss and/or damage arises under such agreements.
- 3-1.6D** The Consultant shall not use, generate, dispose of or transport to the Services and site any Hazardous Substances otherwise than in accordance with Environmental Laws.”
- 3-1.6E** To the extent that the quality of materials and goods or standards of workmanship are not prescribed nor stated to be a matter for such opinion or satisfaction, they shall be of a standard appropriate to the relevant work. For the avoidance of doubt the standards of workmanship required pursuant to this clause shall be no less than those set out in British Standard 8000 or any other standard that may be applicable.

After clause 3-12.2 insert new clauses 3-12.3 and 3-12.4 as follows:

### **“Confidentiality**

- 3-12.3** The Consultant shall be aware of and make it known to all employees agents or sub-Consultants that all information in this Contract, or acquired in any way as a result of the performance or carrying out of the Contract is confidential to the Client. The Consultant or the Consultant's employees or agents or sub-Consultants shall not divulge any such information to any other person, other than for the purposes of the performance or carrying out of the Contract except with the written permission of the Client. The Consultant shall neither dispose nor part with possession of any

confidential information or material provided to the Consultant pursuant to this Contract or prepared by the Consultant pursuant to this Contract other than in accordance with the express written instructions of the Client. The Consultant shall indemnify and keep indemnified the Client against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Consultant of this clause.

3-12.4 The Consultant hereby agrees that if the Consultant, its employees, officers, sub-Consultants or agents gain access in the course of the performance of this Contract or otherwise to information held by the Client and consisting of personal data within the meaning of the Data Protection Legislation, such information shall remain confidential and shall not be disclosed to any other person for any reason whatsoever without the express authority of the Client and the Consultant hereby further agrees and undertakes to indemnify the Client from all actions arising from any such unauthorised disclosure.”

### **SECTION 3-15: TERMINATION**

In clause 3-15.3, delete the word “material”.

In clause 3-15.3, delete the words “within 28 days” and substitute them with the words “within 14 days”.

Insert new clause 3-15.4 as follows:

“3-15.4 Where the Consultant receives notice under Clause 3-15.3 that it is in breach of its obligations, the Client may, without prejudice to any other remedy it may have:

- (i) request from the Consultant that, at the Consultant's own expense and as specified by the Client, it reschedules and carries out the Services in a manner satisfactory to the Client, which may include rectifying completed Services or repeating the provision of any of the Services within such period as the Client may specify by such written notice; and/or
- (ii) withhold or reduce payments to the Consultant, as the Client shall reasonably deem appropriate in each particular case; and/or
- (iii) request that the Consultant pay or allow to the Client liquidated damages at the rate stated in the Contract Particulars between the specified date for completion and the actual date of completion; and/or
- (iv) employ a third party to carry out and complete the Services.

3-15.5 Any expenses incurred which are in addition to the cost of the relevant part of the Services arising as a consequence of suspension of the Services or procuring a third party to do so, shall be recovered in full from the Consultant, including any administrative costs reasonably incurred by the Client.”

### **INSERT THE FOLLOWING NEW CLAUSES**

### **“3-23: TUPE REGULATIONS**

Insert new Clause 3-23 as follows:

- 3-23.1 The Consultant accepts and undertakes that when it tendered for (and entered into) this Contract it has taken into consideration the provisions of the European Acquired Rights Directive 77/187 (“Directive”) and the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“Regulations”) and has considered the application or otherwise of those provisions to this Contract and has taken the appropriate action required under the Directive and/or the Regulations.
- 3-23.2 Where, in the opinion of the Client, the Regulations are likely to apply on the termination or expiration of the Contract, the Consultant shall provide such information as the Client may require in order to comply with the Regulations including, without limitation, such information regarding any Consultant employee who would transfer under the same terms of employment under the Regulations. Such information shall be provided to the Client within fourteen (14) days of request or as otherwise required by the Regulations.
- 3-23.3 Where the award of this Contract, or any successor/replacement contract, creates rights under the Regulations, the Consultant shall indemnify the Client against any transfer costs (including, without limitation, any claims, damages, awards, orders or payments for the Consultant’s failure to comply with the Regulations).”

### **“3-24: FREEDOM OF INFORMATION**

Insert new Clause 3-24 as follows:

- 3-24.1 The Client is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (“the Acts”). As part of the Client's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a request. The Client has absolute discretion to apply or not to apply any exemptions under the Acts.
- 3-24.2 The Consultant shall assist and co-operate with the Client (at the Consultant's expense) to enable the Client to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Client.
- 3-24.3 The Consultant acknowledges that the Client is committed to the Government’s transparency agenda requiring the Client to publish on line items of spend over £500 (five hundred pounds) including actual payments made to the Consultant, the Consultant's tender and the terms of this Contract (excluding commercially sensitive Information).
- 3-24.4 The Consultant acknowledges that the Client may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the discharge of public authorities functions under Part 1 of FOIA be obliged under the FOIA or the Environmental Information Regulations to disclose information:
- a) without consulting with the Consultant, and/or

- b) following consultation with the Consultant and having taken its views into account.”

**“3-25: DATA PROTECTION**

Insert new Clause 3-25 as follows:

- 3-25.1 The Consultant shall (and shall procure that any of its staff involved in the provision of the Services) comply with any requirements under the Data Protection Legislation.
- 3-25.2 The Consultant undertakes it shall comply with relevant obligations, whether as Controller, Processor or otherwise under the Data Protection Legislation and shall promptly provide the Client with such information (including but not limited to a copy of your registration under the Data Protection Legislation) as the Client may reasonably require to satisfy itself of your compliance with the Data Protection Legislation.
- 3-25.3 The Consultant consents to the Client holding and processing data relating to you for legal, personnel, administrative and management purposes and in particular to the processing of any “personal data” and "sensitive personal data" as defined in the Data Protection Legislation relating to you and the Consultant shall (and shall procure that any of your staff involved in connection with the activities under this Agreement shall) comply with any notification requirements under the Data Protection Legislation.
- 3-25.4 The Consultant consents to the Client making such information available to those who provide products or services to the Client (such as advisers), regulatory authorities, governmental or quasi-governmental organisations and potential purchasers of the Client or any part of its business.
- 3-25.5 The Consultant consents to the transfer of such information to the Client's business contacts outside the European Economic Area in order to further its business interests.
- 3-35.6 The Consultant will comply with the Client's data protection policy when processing personal data relating to any employee, worker, customer, Client, supplier or agent of the Client.
- 3-35.7 Each Party undertakes to the other Party that it will not knowingly place the other Party in breach of that other party's obligations under the Data Protection Legislation

**“3-26: EQUAL OPPORTUNITIES, UNLAWFUL DISCRIMINATION AND HUMAN RIGHTS**

Insert new Clause 3-26 as follows:

- 3-26.1 The Consultant shall comply with all applicable equalities, inclusion, and diversity legislation, which shall include any law, statute, bye-law, regulation, order, regulatory policy, guidance or code of practice, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body (“the Equalities Provisions”) now in force or which may be in force in the future and with the Client's equality and diversity policies as may be amended from time to time,

copies of which will be provided by the Client to the Consultant at the Consultant's written request.

- 3-26.2 For the avoidance of doubt, the term "Consultant" in this clause 3-26 shall include the Consultant's employees, agents, representatives and sub-Consultants employed in the execution of the Contract.
- 3-26.3 The Consultant will provide to the Client such information as the Client may reasonably request in respect of the impact of equality issues on the operation of the Contract.
- 3-26.4 If a complaint is made about the acts or omissions of the Consultant in relation to the Equality Provisions, the Consultant may be the subject of an investigation by the Client. During the course of such an investigation the Consultant shall make all documents the Client considers to be relevant to the investigation available and co-operate with the investigation. If any breach of the Client's duties under the Equalities Provisions is found to have occurred due to the acts or omissions of the Consultant, the Consultant shall indemnify the Client in respect of any loss, damage and/or compensation, fines and costs (including but not limited to legal costs and expenses) which may be suffered by or imposed on the Client by any court, tribunal or ombudsman.
- 3-26.5 If requested to do so by the Client the Consultant shall co-operate with the Client at the Consultant's expense in connection with any legal proceedings, ombudsman enquiries, arbitration or Court proceedings in which the Client may become involved arising from any breach of the Client's duties under the Equalities Provisions due to the alleged acts or omissions of the Consultant.
- 3-26.6 The Consultant shall carry out the Services in a manner which is consistent with the Human Rights Act 1998 as though (for the avoidance of doubt) it is bound by the Act and in such a way that the Client shall not be liable to any person for a breach of its duties under the said Act and the Consultant shall indemnify the Client against any direct or indirect costs expenses damages compensation liabilities or other claims incurred or suffered by the Client arising from or in relation to a breach or alleged breach of the said Act.
- 3-26.7 Failure by the Consultant to comply with the provisions of this clause 11 may lead to the termination of this Contract."

**"3-27: CONSULTANT'S PERSONNEL**

Insert new Clause 3-27 as follows:

- 3-27.1 The Consultant shall comply with all relevant legislation relating to the Consultant's personnel ("Personnel"), however employed, including (but not limited to) the compliance in law of the ability of the Personnel to work in the United Kingdom.
- 3-27.2 The Consultant shall employ sufficient persons to ensure that the Services are carried out in accordance with the Contract. The Personnel engaged in and about the provision of the Services shall be properly and sufficiently qualified, competent, skilled and experienced and the Consultant shall ensure that such Personnel are

properly and continuously trained, sufficiently instructed and adequately supervised with regard to the provision of the Services generally and in particular:

- .1 the task or tasks such Personnel have to perform;
- .2 all relevant rules, procedures and statutory requirements concerning health and safety, including the Client's health and safety policy;
- .3 all other statutory requirements in connection with the Contract

and the Consultant shall indemnify the Client against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Consultant of this clause 3-27.

**3-27.3** The Client shall be entitled to require the Consultant to remove from the performance and carrying out of the Services any of the Personnel whose behaviour is in the opinion of the Client negligent, (should it become aware) disruptive, disturbing or likely to cause offence to the Client or its employees and where the Client has received a valid complaint.

**3-27.4** The Client shall in no circumstances be liable either to the Consultant or to any Personnel (including its sub-Consultants) removed pursuant to clause 3-27.3 in respect of any cost, expense, liability, loss or damage occasioned by such removal and the Consultant shall fully indemnify the Client in respect of any claim or proceedings made or brought against the Client by such Personnel.”

#### **“3-28: SAFEGUARDING**

Insert new Clause 3-28 as follows:

**3-28.1** The Consultant shall make arrangements during the provision of any Services under this Contract to ensure that the Consultant and its Personnel comply, in all respects, with all relevant legislation and Client policy in relation to the safeguarding of children and vulnerable adults, which may include enhanced disclosure checking of the Personnel, undertaken through the Disclosure and Barring Service (“DBS”) and a check against the adults barred list or the children’s barred list as appropriate.

**3-28.2** The Consultant shall monitor the level and validity of the checks for each of its Personnel.

**3-28.3** The Consultant warrants that at all times for the purposes of this Contract, it has no reason to believe that any person who is or will be employed or engaged by the Consultant in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.”

#### **“3-29: ASBESTOS**

Insert new Clause 3-29 as follows:

**3-29.1** Where any Services under this Contract involves the use and handling of asbestos, the Consultant shall, at all times, comply with the provisions of the Control of Asbestos



Regulations 2012 and any other relevant legislation, codes of practice and guidelines in respect of asbestos.

- 3-29.2 Where incidental asbestos is discovered or suspected at any of the Client's premises or sites, the Consultant shall notify the Contract Administrator immediately. The Contract Administrator will advise the Consultant by further instruction.
- 3-29.3 Where no asbestos survey has been conducted, the Client may require the Consultant to arrange a survey and provide the Client with the results of the survey as soon as is reasonably possible.
- 3-29.4 In order that the Client's asbestos register may be updated, the Consultant shall promptly notify the Client in writing of any new asbestos materials discovered, or any asbestos materials found to have become seriously damaged and of any asbestos materials wholly removed from the property.
- 3-29.5 It is a condition of this Contract that all of the Consultant's Personnel, which shall include all of the Consultant's employees, agents, representatives and sub-Consultants engaged in the provision of the Services, are required to have undertaken asbestos awareness/identification training prior to commencing work at any of the Client's properties. The Consultant shall provide the Client with written evidence of such training prior to commencing the Services and such written evidence must be held in the Consultant's office for inspection by the Client at all times. If it is determined that a member of the Consultant's Personnel has not undertaken such asbestos awareness/identification training, then that person shall be removed from the provision of the Services immediately.
- 3-29.6 The Consultant shall indemnify the Client against any expense, liability, loss, claim or proceedings etc., in respect of personal injury to any person whomsoever and the contraction of any industrial disease as a result of exposure to asbestos during the course of the work within this Contract will be deemed to be covered by that condition."

**"3-30: ADDITIONAL CLIENT'S REQUIREMENTS**

Insert new Clause 3-30 as follows:

- 3-30.1 In the event of any inconsistencies or any ambiguity between the Articles of Agreement, Conditions and this Part 3 Schedule of Amendments, the Parties agree that this Part 3 Schedule of Amendments shall take precedence over the Articles of Agreement and Conditions whilst the Articles of Agreement shall take precedence over the Conditions.
- 3-30.2 The Consultant shall ensure that it has policies or codes of conduct in relation to:
- equality and diversity policies
  - sustainability
  - information security rules
  - whistleblowing and/or confidential reporting policies.

**3-30.3 The Consultant shall keep and maintain until 6 years after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the agreement including:**

- (a) the Services provided under it;**
- (b) all expenditure reimbursed by the Client;**
- (c) all payments made by the Client**

**and the Consultant shall on request afford the Client or the Client's representatives with such access to those records as may be required in connection with this Contract.**

**3-30.4 The Consultant shall co-operate fully with any enquiry or investigation made by the Client's internal or external auditors, or any other quality or performance inspectors, that in any way concerns this Contract or any sums claimed or charged in relation to this Contract. The Client may use information given by the Consultant in connection with this Contract to prevent and detect fraud and money-laundering; it may also share this information, for the same purpose, with other organizations that handle public funds. The Consultant shall take all necessary action to prevent money laundering. Where the Client deems that the Consultant has been involved in money laundering it will take whatever measures appropriate to prevent this and report such action to the relevant authorities. The discovery of fraud and/or money laundering shall be grounds for termination of the Consultant's employment.**

**3-30.5 The Consultant shall comply with any Client policies affecting the Contract and shall if requested provide the Client with any relevant information required in connection with any legal inquiry, arbitration or court proceedings in which the Client may become involved or any relevant disciplinary hearing internal to the Client and shall give evidence in such inquiries or proceedings or hearings arising out of the Contract. The Consultant shall co-operate fully with the Commissioner for Local Administration in England (the Local Government Ombudsman) in any investigation by him of any complaint relating to the Contract and in enquiries by any of the Client's Committees. From time to time, the Client may require the Consultant to provide reports to, or be involved in discussions with, elected members. The Consultant shall comply with the Client's reasonable requirements and shall not be entitled to any additional payment in respect thereof save to the extent such costs are incurred as a result of a default on the part of the Client.**

**3-30.6 The Consultant shall, upon becoming aware of anything in connection with the Contract that is likely to give rise to legal inquiry or litigation, forthwith notify the Contract Administrator, giving such details as are available.**

**3-30.7 The Consultant shall deal with any complaints about its performance of the Contract, received from whatever source, in a prompt, courteous and efficient manner. The Consultant shall set up an internal process for dealing with complaints and shall keep a written record of all complaints received and of the action taken in relation to such complaints. The Consultant shall inform the Contract Administrator in writing of all complaints received and of all steps taken, and shall permit its record of complaints to be inspected by the Contract Administrator (or any other person nominated by him) at all reasonable times on reasonable notice.**

- 3-30.8 The Consultant and its Personnel shall not speak to the press or broadcasting media about any matters connected with the Contract without the prior written consent of the Contract Administrator. If the Consultant intends to advertise its provision of the Services to the Client, it shall obtain approval of the Client before doing so as to the content of such advertisement.
- 3-30.9 The Consultant should note that it is of the utmost importance that their employees and sub contract employees carry with them at all times their company's identification card to produce when challenged by the Client's staff or council residents.
- 3-30.10 Where under the Contract any sum of money shall be recoverable from or payable by the Consultant, the same may be deducted from any sum item due or which at any time thereafter may become due to the Consultant under the Contract or under any other similar construction contract with the Client.
- 3-30.11 The Consultant shall be deemed to have obtained information on all matters affecting the execution of the Services. No claim arising from errors or omissions will be considered.
- 3-30.12 The Consultant shall comply with all Standing Orders of the Client in so far as they are applicable to the execution of the Services. It is the responsibility of the Consultant to determine the nature and extent of such Standing Orders for lack of knowledge will not constitute grounds for non-compliance. A copy will be available for inspection on request.
- 3-30.13 The Consultant shall comply with all statutory requirements to be observed and performed in connection with the Contract and shall indemnify the Client against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Consultant of this clause 17.”

**“30-31: BONDS AND GUARANTEES**

Insert new Clause 3-31 as follows:

- 3-31.1 At the exclusive discretion of the Client, when the Consultant is a subsidiary of another company it shall procure that its ultimate holding company (or, at the Client's complete discretion, such other company within the Consultant's group as the Client shall require) shall provide a parent company guarantee in favour of the Client in respect of the Consultant's obligations under the Contract executed as a deed in the form set out in Appendix 1. The guarantee must be in place before the Contract commences.
- 3-31.2 At the exclusive discretion of the Client, where the Consultant does not have a parent company or where the parent company is not approved by the Client, the Consultant shall enter into a contract guarantee bond, in the form set out in Appendix 2, by which they shall be jointly and severally bound to the Client in a sum equivalent to 10% of the total contract value/annual price conditioned for the due fulfilment of the terms and conditions of the Contract. The surety shall be either an insurance company or bank whose registered office is situated in England. The bondsman is to be approved by the Client. The bond must be in place before the Contract commences.”

#### **“INJURY, DAMAGE AND INSURANCE**

Insert new clause 3-32 as follows:

- 3-32.1 The Consultant shall ensure, so far as is reasonably practicable, the health, safety and welfare at work of his employees and shall conduct his undertakings in such a way as to ensure that persons other than his employees who may be affected by his operations are not exposed to risks to their health or safety and shall in all respects perform his duties under the Health and Safety at Work, etc Act 1974 and any Health and Safety Regulations made thereunder.
- 3-32.2 The Consultant shall at all times reasonably prevent any public or private nuisance (including without limitation any such nuisance caused by noxious fumes, noisy working operations or the deposit of any materials or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker arising out of the provision of the Services shall defend or, at the Client's option, assist the Client in defending any action or proceedings which may arise as a result of any breach by the Consultant of its obligations under this Contract."

#### **“PREVENTION OF BRIBERY AND CORRUPTION**

Insert new clause 3-33 as follows:

- 3-33.1 The Consultant warrants and undertakes to the Client that:
- .1 it will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and will not give any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972;
  - .2 it will procure that any person who performs or has performed services for or in its behalf (“Associated Person”) in connection with this Contract complies with this clause and subject to the JCT Form of Contract to be used;
  - .3 it will not enter into any agreement with any Associated Person in connection with this Contract, unless such agreement contains undertakings on the same terms as contained in this clause and subject to the JCT Form of Contract to be used;
  - .4 it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Contract;
  - .5 from time to time at the reasonable request of the Client it will confirm in writing that it has complied with its undertakings contained herein and will provide any information reasonably requested by the Client in support of such compliance;

**.6 it shall notify the Client as soon as practicable of any breach of any of the undertakings contained within this clause of which it becomes aware.**

**3-33.2 Where the Consultant or Consultant's employees, servants, sub-Consultants, suppliers or agents or anyone acting on the Consultant's behalf, engages in conduct prohibited by the Bribery Act 2010 or the Local Government Act 1972 section 117(2) in relation to this or any other contract with the Client, the Client has the right to;**

**.1 terminate the Contract and recover from the Consultant the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the provision of the Services and any additional expenditure incurred by the Client throughout the remainder of the Contract.**

**.2 recover in full from the Consultant any other loss sustained by the Client in consequence of any breach of this clause, whether or not the Contract has been terminated."**

## **PART 4 – DEFINITIONS AND INTERPRETATION**

### **4-1 Definitions**

Insert the following new Definitions:

**“Data Protection Legislation**

means (i) the Data Protection Act 1998 (DPA 1998), (ii) the General Data Protection Regulation (Regulation (EU) 2016/679) (“GDPR”), Law Enforcement Directive (Directive (EU) 2016/680) (“LED”), (iii) the Data Protection 2018 (“DPA 2018”) to the extent that it relates to processing of personal data and privacy and (iv) all applicable Legislation about the processing of personal data and privacy;”

**“Environmental Laws** - any law statute, statutory instrument or legislation of the European Union having effect in the United Kingdom, or circulars, guidance notes and the like issued by the United Kingdom Government or relevant regulatory agencies relating to the protection or pollution of the environment (within the meaning of the Environmental Protection Act 1990);”

**“Hazardous Substances** - any substances which are capable of carrying harm to man or any living organisms supported by the environment (within the meaning of the Environmental Protection Act 1990);”

**Proprietary Material** - all drawings, details, plans, specifications, schedules, reports, calculations and other work, whether in written or electronic form (and any designs, ideas and concepts contained in them) prepared, conceived or developed by or on behalf of the Consultant in connection with this Contract and/or any Order;”

**“TFEU** – means the Treaty on the Functioning of the European Union;”

**“the Treaties** – means the Treaty on European Union and TFEU”