**CONSULTANCY AGREEMENT**

**BETWEEN**

**THE LONDON BOROUGH OF CROYDON**

**AND**

**[NAME OF CONSULTANT]**

Contract Number:

THIS AGREEMENT is made on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**BETWEEN:**

(1) The Mayor and Burgesses of the London Borough of Croydon of Town Hall, Katharine Street, Croydon. CR0 1NX (“the Council”); and

(2) [NAME OF CONSULTANT] (a company registered in England and Wales under number [COMPANY NUMBER] of [ADDRESS] (“the Consultant”).

**NOW IT IS AGREED** between the Council and the Contractor that:

This Agreement comprises the following documents, and in the event of any inconsistency between them, such inconsistency shall be resolved by giving precedence in the following order:

1. Terms and Conditions
2. Specification, at Schedule 1
3. Pricing Document, at Schedule 2
4. Tender Response (if any), at Schedule 3
5. Data Protection, at Schedule 4
6. Forms, at Schedule 5

Signed for an on behalf of the London Borough of Croydon

Authorised Signatory

Name:

Position:

Signed for on behalf of the Contractor:

Name:

Position:

TERMS AND CONDITIONS

1. Definitions and interpretation
   1. In this Agreement the following words shall have the following meanings:-

|  |  |  |
| --- | --- | --- |
| “Agreement” | means the agreement between the Council and the Consultant to which these conditions, as referenced therein, shall apply and for the avoidance of doubt shall include any variations subsequently agreed by the parties in writing. | |
| “Authorised Representative” | means the person appointed by a party to act on its behalf for the purpose of managing this Agreement | |
| “Commencement Date” | means the [Insert Date] date when this Agreement has been signed by all the parties | |
| “Confidential Information” | means all information which is obtained by the Consultant from the Council pursuant to this Agreement | |
| “Construction Contract” | has the meaning given in the Housing Grants Construction and Regeneration Act 1996 | |
| “Expiry Date” | means [Insert Date] subject to such extension as may be awarded in accordance with these conditions. | |
| “Fees” | means the fees for the Services, as set out in the Pricing Document, and any agreed expenses. | |
| “FOIA” | the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation. | |
| “GDPR” | means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing directive 95/46/EC as updated, superseded or repealed from the time to time. | |
| “Required Insurances” | means the following: | |
| Professional Indemnity | £2,000,000 (two million pounds) |
| Public Liability | £5,000,000 (five million pounds) |
| Employer’s Liability | £10,000,000 (ten million pounds) |
| for each and every claim | |
| “Services” | means the services to be supplied by the Consultant, as set out in the Specification. | |
| “Specification” | means the description, standards, methods and techniques to required as part of the Services. | |
| “Tender Response” | means the Consultant’s tender response dated [……] attached as Schedule 3. | |
| “Term” | means [Insert term] starting on the Commencement Date. | |
| “Working Day” | means Monday to Friday excluding bank holidays. | |

* 1. Where appropriate, the singular includes the plural and vice versa. Words importing one gender include all other genders.
  2. Persons includes companies and all other legal entities.
  3. Unless otherwise stated, any reference to a provision of any legislation is a reference to that provision as amended, extended or re-enacted by any subsequent legislation.
  4. The headings in this Agreement are for convenience only and will not affect its interpretation.
  5. Reference to a clause or schedule is to the corresponding clause or schedule in this Agreement unless stated to the contrary. The schedules to this Agreement are an integral part of this Agreement and any reference to this Agreement includes a reference to the schedules.
  6. Words and expressions defined in this Agreement, unless the context otherwise requires, have the meanings ascribed to them in this Agreement.

1. TERM
   1. The Council hereby appoints the Consultant to provide the Services from the Commencement Date to the Expiry Date.
   2. Subject to earlier termination, the Council reserves the right to extend the Term beyond the Expiry Date by providing prior notice to the Consultant.
2. Consultant’s Obligations
   1. The Consultant shall provide the Services:
      1. with all reasonable care and skill expected of a similarly qualified consultant with experience in delivering similar services;
      2. in accordance with the Specification;
      3. in accordance with the Tender Response
      4. in accordance with good industry practice;
      5. in accordance with all written instructions of the Council’s Authorised Representative;
      6. with due regard to all relevant health and safety legislation and code of practice;
      7. so as to serve and promote the interests of the Council.
   2. The Consultant will act upon all written instructions issued by the Council’s Authorised Representative as soon as reasonably practicable, including but not limited to any variation in relation to an addition, modification, deferment, omission, reduction from or substitution of any of the Services.
   3. The Consultant will ensure that the Services are carried out by appropriately qualified personnel who are acceptable to the Council’s Authorised Representative and will replace immediately any person who the Council’s Authorised Representative reasonably requires replacing.
   4. If the Contractor does not comply with the provisions of Condition 5.1 in any way, the Council may serve the Contractor with a notice in writing setting out the details of the Contractor’s default (a Default Notice).
   5. Any sub-consultants directly appointed by the Consultant will be under the direct control and supervision of the Consultant at all times and the Consultant will be and remain liable under the Agreement for all work sub-contracted by him and for acts defaults or neglects of any sub-contractor his agents and servants.
   6. The Consultant will keep the Council’s Authorised Representative fully and promptly informed in writing of all matters in relation to the Services which may have programme, cost or contractual implications.
   7. The Consultant shall comply at its own expense with any statutory requirements and industry standards.
   8. The Council will provide the Consultant with all the facilities, resources, information and access to the Council’s premises that are reasonably necessary to carry out the Services.
   9. The Consultant’s Authorised Representative shall be empowered to act on behalf of Consultant and shall be available for consultation with the Council’s Authorised Representative at all reasonable times.
   10. The Consultant acknowledges that it has been supplied with a copy of the Council’s rules regarding health and safety. The Consultant agrees to comply with these rules, and any additional rules made known to the Consultant from time to time by the Council together with all applicable statutory rules and regulations regarding these matters. The Council will be responsible for procuring that its employees and agents also comply with these rules and regulations.
   11. Either party shall notify the other as soon as practicable of any health and safety hazards of which it becomes aware.
   12. The Consultant will not unlawfully discriminate within the meaning and scope of the Race Relations Act 1976, the Sex Discrimination Act 1975, the Disability Discrimination Act 1995, the Equal Pay Act 1970 or any statutory instrument, byelaw or legislation of the European Communities relating to equal opportunities which may be in force or come into force until certification of completion of the whole of the Services by the Council’s Authorised Representative including the Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Religion or Belief) Regulations 2003.
   13. Without prejudice to the generality of clause 3.k), the Consultant is to comply with the Council’s Equal Opportunities Policy, a copy of which has been provided to the Consultant by the Council.
   14. The Consultant shall take all necessary steps to secure the observance of the provisions of clauses 3.k) and 3.l) above by all its employees, servants, agents or sub-consultants employed in the execution of this Agreement.
3. fees
   1. In consideration of the Consultant carrying out the Services, the Consultant shall be entitled to invoice the Council for, and the Council shall be required to pay, the Fees.
   2. In the event this Agreement is a Construction Contract, the Scheme for Construction Contracts shall, unless stated otherwise in the Pricing Document, apply as follows:
      1. payment due dates shall fall on the fifth Work Day of each month, and shall cover the Services provided in the preceding month
      2. either party may issue the application for payment;
      3. the final date for payment shall be 30 days after the payment due date;
      4. pay less notices must be issued 5 Working Days before the final date for payment;
   3. Where this Agreement is not a Construction Contract, the following shall apply
      1. In order for the invoice to be valid, it will have to be certified correct by the Council’s Authorised Representative
      2. The Council will pay, unless otherwise agreed in writing, the Consultant for each contractually correct invoice within the thirty (30) days following receipt.
      3. In the event of the Council’s Authorised Representative disputing any invoices, the Council will have liability to pay only the undisputed invoices until such a time as the dispute is resolved.
      4. Without prejudice to any other rights or remedies, the Council will be entitled to withhold deduct or set-off from any amounts due or owing by the Council to the Consultant in connection with this Agreement any losses, costs or liquidated damages arising from the Consultant’s breach of this Agreement, or any other agreement, subject, always to the Council giving the Consultant not later than five (5) days before the final date for payment of the amount due a written notice which will specify any amount proposed to be withheld, deducted or set-off, the ground or grounds for such withholding and/or deduction and the amount of the withholding and/or deduction attributable to each ground.
   4. The Council acknowledges that it will not have the right to withhold, deduct and/or set-off any amounts due, or owing, to the Consultant against any sums that the Council has been ordered to pay by an Adjudicator appointed under this Agreement (or any other agreement between the parties).
   5. Expenses are deemed to be included in the Fees, unless otherwise agreed. Approved expenses will not be paid unless accompanied by supporting evidence, including where applicable a valid VAT invoice or receipt, will be reimbursed thirty (30) days from receipt by the Council of a valid VAT invoice in respect of such expenses.
4. Variation
   1. The Council’s Authorised Representative may from time to time require changes to the Specification and accordingly upon giving written notice to the Consultant may add to or delete from or otherwise amend in any way the provisions of the Specification. A variation under this provision shall not invalidate the Agreement and the Consultant shall be bound by any such variation.
   2. The value of any variation shall be agreed between the parties, or failing agreement ascertained in accordance with the following provisions:
      1. Where a part of the Services is omitted from the Specification or the rates and prices contained in the Pricing Document shall determine the ascertainment of the value of the Services omitted.
      2. Where the variation is of a similar character to and is executed under similar conditions as the Services in the Specification the rates and prices for the Services (as set out in the Pricing Document) shall determine the ascertainment.
      3. Where the variation is not of a similar character to or not executed under similar conditions to the Services, the ascertainment of value shall be made at fair rates and prices having due regard where applicable to the rates and prices contained in the Pricing Document Schedule of Rates, or at the discretion of Authorised Officer, by reference to the day rates in the Specification.
   3. Except as set out above, no amendment to this Agreement shall be valid unless made in writing and signed by the parties hereto.
5. Force Majeure
   1. Notwithstanding any other provision of these conditions neither party shall be liable for any failure or delay in the performance of this Agreement caused by means beyond their reasonable control including without limitation, strikes (except by the Consultants staff), lock outs, labour disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction or any overriding emergency procedures, fire, flood and storm.
   2. If the Consultant is unable to perform the Services and obligations under this Agreement as a direct result of a force majeure event, that party shall give to the other written notice of the inability stating the reason in question within two (2) days of the inability arising. The operation of this Agreement shall be suspended during the period (and only during the period) in which the reason continues save in respect of confidentiality. Forthwith upon the reason ceasing to exist the party relying on it shall give written notice to the other of this fact whereupon this Agreement shall continue in operation. If the reason continues for a period of tens (10) days, the party not claiming relief under this clause 6 may terminate this Agreement forthwith upon giving written notice of such termination to the other party.
6. Disputes
   1. If any dispute arises out of this Agreement which cannot be amicably settled between the parties then the parties may attempt to settle such dispute by mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure (“the Model Procedure”) as published by CEDR from time to time. For the avoidance of doubt neither party will commence any court proceedings in relation to any dispute arising out of this Agreement until they have used reasonable endeavours to attempt to settle it by mediation.
   2. Where this Agreement is a Construction Contract,
      1. clause 7.a) shall not prevent either party commencing adjudication or enforcing an adjudicator’s decision through the courts.
      2. The Scheme for Adjudication shall apply,
      3. In the event of failure by the parties to agree upon the choice of Adjudicator then the Adjudicator will be nominated upon the application of either party by the Chief Executive (or if he is unable to act by any of his nominated representatives) for the time being of the CEDR;
   3. For the avoidance of doubt, the Consultant shall continue to perform its obligations under this Agreement notwithstanding any dispute.
   4. If a dispute or difference arises under this Contract which either Party wishes to refer to adjudication, the Scheme shall apply except that for the purposes of the Scheme the Adjudicator shall be the person (if any} and the nominating body shall be that stated in the Contract Particulars (item 17).
7. RISK AND INSURANCE
   1. No provision of this Agreement will operate to exclude or restrict the consultant’s liability under statute or common law for any goods that the Consultant supplies, or has supplied, for use on, or incorporation in to the Services.
   2. The Council and Consultant agree and acknowledge that the Council has relied on, and will be relying on, the Consultant’s expertise in carrying out the Services and also on the accuracy of all statements made and advice given by the Consultant in connection with the Services.
   3. The Council reserves the right under this Agreement to seek recourse against the Consultant in the event of professional negligence or wilful misconduct in the Consultant’s performance of the Services.
   4. The Consultant will be liable for, and will indemnify the Council and insure against, any expense, liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or caused by the carrying out of the Services, except to the extent that the same is due to any act or neglect of the Council or of any person for whom the Council is responsible.
   5. Without prejudice to any other rights or remedies which the Council may possess, the Consultant warrants that it will have and keep in force the Required Insurances to cover any claim made against them by the Council or third parties in relation to their Services including (but not limited to) any loss arising out of the breach of contract. The Consultant shall produce to the Council’s Authorised Representative premium renewal receipts relative to such policies of insurance or other suitable proof of cover upon request.
8. Termination
   1. The Council may by notice in writing to the Consultant terminate this Agreement with immediate effect. where the Consultant:
      1. fails to perform the Services, or
      2. commits a material breach of any obligation imposed upon him by this Agreement,
      3. fails to comply with any reasonable instruction of the Council’s Authorised Representative; or
      4. changes his legal status; or
      5. fails to remedy a breach, following notice from the Council.
      6. is unable to perform the Services;
      7. fails to comply with the Council’s Equal Opportunities Policy
      8. fails to maintain its professional indemnity insurance or such insurance becomes unavailable during the provision of the Services.
      9. (if the Consultant is an individual or a partnership) has a petition for bankruptcy presented to the courts becomes bankrupt, or makes a composition, or arrangement with his creditors, or has a proposal in respect of himself or his firm for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986 as amended by the Enterprise Act 2002, or where an application for bankruptcy is made against any individual partner of the firm, or where the partnership has a provisional liquidator receiver or manager of its business duly appointed, or where the partnership is dissolved save for the purposes of bona fide reconstruction on terms acceptable to the Council, or where a substantial change in the partners occurs; or
      10. (if the Consultant is a company) has a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986, or has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrator, or has a petition for a winding-up order made or except for the purposes of reconstruction) a resolution for voluntary winding-up passed, or professional liquidator, or a receiver or manager of its business or undertaking duly appointed, or has an administrative receiver, as defined in the Insolvency Act 1986, appointed or possession taken by or on behalf of the holders of any debentures secured by a floating charge or has a lien enforced or arrestment order made against it or served on any of its debtors on behalf of any of its creditors or commits any act of insolvency as defined in the Insolvency Act 1986.
      11. commits any offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972
      12. The Consultant may terminate the Contract in the event that the Council commits a Termination Payment Default by giving 30 days’ written notice to the Council. If the Council remedies the Termination Payment Default in the 30 day notice period, the Contractor’s notice to terminate the Contract shall be deemed to have been withdrawn.

# TERMINATION ON NOTICE

* + 1. Without affecting any other right or remedy available to it, the Council may terminate the Contract in whole or in part at any time by giving three months’ written notice to the Contractor.
  1. In the event of the Council terminating the Agreement in accordance with clause 9.a) the Consultant will be entitled to payment for work completed with a percentage of the fee apportioned in relation to work in progress.

1. Confidentiality
   1. The Consultant shall not either during the term of this Agreement or at any time after its termination disclose the Confidential Information to any person (except the Consultant’s employees and then only insofar as it is necessary for the proper performance of the Consultant’s duties) not authorised by the Council’s Authorised Representative to receive it and shall not utilise any Confidential Information to the detriment or prejudice of the Council.
   2. All correspondence, documents, data and other property or information coming into the Consultant’s possession as a result of its work under this Agreement shall be regarded as the Council’s property. On termination hereof the Consultant shall make arrangements to deliver to the Council’s Authorised Representative all such correspondence, documents, data and other property and information remaining in its possession or under its control as soon as practicable and will certify that all such items have been so delivered and that no such items remain in its possession.
   3. The obligation in clauses 10.a)and 10.b) above shall not apply to:
      1. any information in the Consultant’s possession which comes into the public domain other than by breach of this Agreement;
      2. any information which was in the public domain at the time of the communication to the Consultant; or
      3. any information which was in the Consultant’s possession, required by law to be disclosed, or known prior to disclosure by The Council.
2. Announcements
   1. The Consultant shall not publish any literature, deliver any lecture, or make any communication to the press relating to the business of the Council or on any matter with which the Council may be concerned unless it has previously and on each occasion obtained the prior permission of the Council’s Authorised Representative. The copyright in any publication or report by the Consultant relating to the business of the Council or to any matter with which the Council may be concerned shall belong to the Council absolutely and beneficially, unless otherwise agreed in writing in any particular case.
   2. The Consultant may without the prior written consent of the Council’s Authorised Representative undertake other consultancy assignments which do not conflict with its obligations under this Agreement.
3. Intellectual Property
   1. If at any time during this Agreement the Consultant shall invent, design, discover or devise either by itself, or by any of its employees or jointly with any employee of or person working for the Council any invention, improvement, discovery or design which results from work carried out by the Consultant pursuant to the Services then all such inventions, improvements, discoveries and designs shall belong to the Council absolutely and beneficially. The Consultant shall communicate to the Council’s Authorised Representative full particulars of any such invention, improvement, discovery or design and the Council’s Authorised Representative will then decide whether and where letters patent or other intellectual property protection shall be applied for either in the name of the Consultant or in the name of the Council or its nominee or in their joint names in accordance with the law and practice applicable thereto and as required by the Council’s Authorised Representative in any case at the Council’s expense.
   2. The Consultant will apply for letters, patent or other intellectual property protection (including but not limited to copyright, trademark or design registration) in respect of any items referred to in clause 12.a) if so requested by the Council’s Authorised Representative in any part of the world both during the term of this Agreement and thereafter, including the execution of all necessary documents to procure the grant of such letters, patent or other protection and the maintenance thereof and, should such letters patent or other protection be granted in the first place in the name of the Consultant, the assignment thereof to the Council absolutely or as the Council’s Authorised Representative may direct.
   3. Upon completion of the Services or termination of this Agreement, the documents in any way prepared or used by the Consultant in connection with the Services will immediately be delivered to and become the property of the Council in all respects and the Consultant assigns full copyright and future copyright in the such documents to the Council.
   4. The Council will retain copyright on all material produced as part of the study. Prior consent in writing will be required for the publication or use of the information by other persons or bodies.
   5. The Consultant agrees to arrange on behalf of the Council, licences for use by the Council, at the expense of the Consultant, of any items provided by the Consultant or on its behalf in performance of the Services and which remain the intellectual property of third parties.
   6. The Consultant shall indemnify the Council against all claims and expenses for infringement of any patent, registered design, copyright, trademark, methodologies, computer programs or other intellectual property relating to or arising from the performance of the Services.
4. Third Party Rights
   1. Except as expressly stated otherwise, nothing in this Agreement confers or purports to confer any rights to enforce any of its terms pursuant to the Contracts (Rights of Third Parties) Act 1999 on any person who is not a party to this Agreement.
   2. The Consultant shall not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder, whether in whole or in part, without the prior written consent of the Council’s Authorised Representative.
   3. The Consultant shall not, without the prior written consent of the Council’s Authorised Representative enter into any sub-agreement for the performance of any part of this Agreement.
5. Status of the Consultant
   1. Where the Consultant is an individual, the Parties intend the Consultant to be an independent contractor providing services to the Council, and not an employee or servant of the Council. The Consultant shall bear exclusive responsibility for the payment of his national insurance and pension contributions, and any income or other tax liabilities as a self-employed person. The Consultant shall indemnify the Council for any liability incurred by the Council for the Consultant’s breach of this clause, or for any contrary finding by the courts or relevant authorities.
6. Data
   1. The parties shall comply with Schedule 4.
7. miscellaneous
   1. Any notice required to be given under this Agreement may be given by being personally delivered at or sent by pre-paid first class post to the address of the relevant party as given in this Agreement or such other address as shall be notified in writing to the other party in accordance with this clause, or by email to the email address provided or by fax if appropriate. In the case of personal delivery, delivery shall be deemed to be the day of such delivery, and in the case of post-delivery shall be deemed to have been effected two Working Days after the date of posting.
   2. Save as expressly provided for in this Agreement, each of the parties shall pay any costs and expenses incurred by it in connection with this Agreement.
   3. If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the Courts of any jurisdiction to which it is subject such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement.
   4. This Agreement embodies the entire understanding of the parties in respect of the matters contained or referred to in it and is the only subsisting Agreement between the Council and the Consultant relating to the Services. There are no promises terms conditions or obligations oral or written express or implied other than those contained in this Agreement.
   5. This Agreement is not intended to create a partnership, nor an agent-principal relationship.
   6. The failure of a party hereto to exercise or enforce any right conferred upon it under this Agreement shall not be deemed to be a waiver of any such right or operate so as to bar the enforcement thereof at any time.
   7. This Agreement shall be governed by the laws of England and Wales, and the parties hereby submit to the exclusive jurisdiction of the English Courts for such purpose except for enforcement proceedings where the English courts shall have non-exclusive jurisdiction.
8. Contract Management

# REPORTING AND MEETINGS

## The Contractor shall provide the management reports in the form and at the intervals as reasonably requested by the Council’s Authorised Representative.

## The Authorised Representatives shall meet at least quarterly and the Contractor shall, at each meeting, present its previously circulated management reports, as prepared under Condition 16.1.

# MONITORING

## The Council may monitor the performance of the Services by the Contractor.

## The Contractor shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the monitoring referred to in Condition 17.1 at no additional charge to the Council.

1. Liabilites

# INDEMNITIES AND INSURANCE

### The Contractor shall indemnify the Council against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Council arising out of or in connection with:

### any claim made against the Council for actual or alleged infringement of a third party’s Intellectual Property arising out of, or in connection with, the Services;

### any claim made against the Council by a third party arising out of, or in connection with, the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Contractor, the Contractor’s Personnel or a Contractor Party;

### any claim or loss due to the breach of the Contract, negligence, wilful default or fraud of the Contractor or of its employees or any of its representatives or Sub-Contractors save to the extent the same is directly caused by or directly arises from the negligence breach of the Contract or applicable law by the Council.

### During the Term, the Contractor shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, employers’ liability insurance and public liability insurance (the **Required Insurances**) to cover such heads of liability as may arise under or in connection with the Contract, and shall, on the Council’s request, produce both the insurance certificate giving details of cover and the receipt for the current year’s premium in respect of each insurance.

### If, for whatever reason, the Contractor fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

### The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

The Contractor shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the Contract

1. FREEDOM OF INFORMATION
   1. The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Council (at the Contractor’s expense) to enable the Council to comply with these information disclosure requirements.
   2. The Contractor shall and shall procure that its Sub-Contractors shall: (a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two Working Days of receipt; and (b) provide all necessary assistance to and co-operate with the Council in dealing with a Request for Information.
   3. The Council shall be responsible for determining at its absolute discretion whether any Commercially Sensitive Information and/or any other Information: (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; and/or (b) is to be disclosed in response to a Request for Information.
   4. The Contractor acknowledges that the Council may be obliged under the FOIA or the EIR to disclose Information without consulting with the Contractor.

**SCHEDULE 1**

**SPECIFICATION**

**SCHEDULE 2**

**PRICING**

**SCHEDULE 3**

**TENDER RESPONSE DOCUMENTS**

**SCHEDULE 4**

**DATA PROTECTION**

1. **DATA PROCESSING**
   1. Where the Contractor, pursuant to this Contract, processes Personal Data on behalf of the Council, the Contractor acknowledges that the Council is the Data Controller and the owner of such Personal Data, and that the Contractor is the Data Processor.
2. **COMPLIANCE WITH DATA PROTECTION LAWS**
   1. The Data Processor warrants that it has complied, and shall continue to comply, with the requirements of the applicable Data Protection Laws and all other data protection legislation in any jurisdiction relevant to the exercise of its rights or the performance of its obligations under this Contract.
3. **DATA PROCESSING OBLIGATIONS**
   1. In respect of any Personal Data to be processed by the Data Processor pursuant to this Contract for which the Council is Data Controller, the Data Processor shall:
      1. have in place and at all times maintain appropriate technical and organisational measures, which may be reviewed by the Council at its discretion, and in such a manner as is designed to ensure the protection of the rights of the data subject and to ensure a level of security appropriate to the risk and shall implement any reasonable security measures as requested by the Council from time to time;
      2. not engage any sub-processor without the prior specific or general written authorisation of the Council (and in the case of general written authorisation; the Data Processor shall inform the Council of any intended changes concerning the addition or replacement of other processors and the Council shall have the right to object to such changes);
      3. ensure that each of the Data Processor’s employees, agents, consultants, subcontractors and sub-processors are made aware of the Data Processor’s obligations under this Schedule and enter into binding obligations with the Data Processor to maintain the levels of security and protection required under this Schedule. The Data Processor shall ensure that the terms of this Schedule are incorporated into each Contract with any sub-processor, subcontractor, agent or consultant to the effect that the sub-processor, subcontractor, agent or consultant shall be obligated to act at all times in accordance with duties and obligations of the Data Processor under this Schedule. The Data Processor shall at all times  be and remain liable to the Council for any failure of any employee, agent, consultant, subcontractor or sub-processor to act in accordance with the duties and obligations of the Data Processor under this Schedule;
      4. process that Personal Data only on behalf of the Council in accordance with the Council’s instructions and to perform its obligations under this Contract or other documented instructions and for no other purpose save to the limited extent required by law;
      5. (at no additional cost to the Council) immediately on termination of the Contract, permanently remove the Personal Data (and copies) from the Data Processor’s systems, or (at the request of the Council) deliver to the Council (in such format as the Council may require) a full and complete copy of all Personal Data, and, following confirmation of receipt from the Council, permanently remove the Personal Data (and copies) from the Data Processor’s systems, and the Data Processor shall certify to the Council that it has complied with these requirements, and such Personal Data shall remain confidential in perpetuity;
      6. ensure that all persons authorised to access the Personal Data are subject to obligations of confidentiality and receive training to ensure compliance with this Contract and the Data Protection Laws;
      7. make available to the Council all information necessary to demonstrate compliance with the obligations laid out in Article 28 of GDPR and this Schedule and allow for and contribute to audits, including inspections, conducted by the Council or another auditor mandated by the Council, of the Data Processor’s data processing facilities, procedures and documentation (and the facilities, procedures and documentation of any sub-processors) in order to ascertain compliance with this Schedule, within 5 working days of request by the client and, following any such audit, without prejudice to any other rights of the Council, the Data Processor shall implement such measures which the Council considers reasonably necessary to achieve compliance with the Data Processor’s obligations under this Schedule; provided that, in respect of this provision the Data Processor shall immediately inform the Council if, in its opinion, an instruction infringes Data Protection Laws;
      8. taking into account the nature of the processing, provide assistance to the Council, within such timescales as the Council may require from time to time, in connection with the fulfilment of the Council’s obligation as Data Controller to respond to requests for the exercise of data subjects’ rights pursuant to Chapter III of the GDPR to the extent applicable;
      9. provide the Council with assistance in ensuring compliance with articles 32 to 36 (inclusive) of the GDPR (concerning security of processing, data breach notification, communication of a personal data breach to the data subject, data protection impact assessments, and prior consultation with supervisory authorities) to the extent applicable to the Council, taking into account the nature of the processing and the information available to the Data Processor;
      10. (at no additional cost to the Council) deal promptly and properly with all enquiries or requests from the Council relating to the Personal Data and the data processing activities, promptly provide to the Council in such form as the Council may request, a copy of any Personal Data requested by the Council;
      11. (at no additional cost to the Council) assist the Council (where requested by the Council) in connection with any regulatory or law enforcement authority audit, investigation or enforcement action in respect of the Personal Data;
      12. immediately notify the Council in writing about:
          1. any potential or actual Data Breach or any potential or actual accidental loss, disclosure or unauthorised access of which the Data Processor becomes aware in respect of Personal Data that it processes on behalf of the Council;
          2. any request for disclosure of the Personal Data by a law enforcement authority (unless otherwise prohibited);
          3. any request or complaint received directly from a data subject (without responding other than to acknowledge receipt); and
          4. any communication the Contractor receives from the Information Commissioner’s Office or other regulatory body.
      13. maintain a record of its processing activities in accordance with Article 30 of the GDPR; and
      14. indemnify the Council against all liabilities, claims, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Council or for which it may become liable as a result of or in connection with any failure of the Data Processor, its employees, agents, consultants, subcontractors or sub-processors to comply with this Schedule.
      15. The Council may, at any time on not less than 30 Working Days’ notice, revise this paragraph 3 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
      16. The parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Council may on not less than 30 Working Days’ notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner’s Office.
4. **INTERNATIONAL DATA TRANSFERS**
   1. In respect of any Personal Data to be processed by a party acting as Data Processor pursuant to this Contract for which the other party is Data Controller, the Data Processor shall not transfer the Personal Data outside the EEA or to an international organisation without:
      1. obtaining the written permission of the Data Controller;
      2. ensuring appropriate levels of protection, including any appropriate safeguards if required, are in place for the Personal Data in accordance with the Data Protection Laws;
      3. notifying the Data Controller of the protections and appropriate safeguards in paragraph 4.1.2 above;
      4. documenting and evidencing the protections and appropriate safeguards in paragraph 4.1.2 above and allowing the Data Controller access to any relevant documents and evidence.
5. **DETAILS OF PROCESSING ACTIVITIES**
   1. The following table sets out the details of processing as required by Article 28 of GDPR:

|  |  |
| --- | --- |
| **Purposes for which the Personal Data shall be processed**  Please specify the purposes for which the Data Processor intends to process the Personal Data. |  |
| **Description of the categories of the data subjects**  Please specify the categories of data subject whose Personal Data shall be processed under this Contract. |  |
| **Description of the categories of Personal Data**  Please specify the categories of Personal Data that shall be processed under this Contract and identify any categories that can be considered sensitive personal data in **bold**. |  |
| **Description of transfers of Personal Data to a country outside of the EEA**  Please record transfers of Personal Data outside of the EEA, recording the country and/or international organisation and, where applicable, please document suitable safeguards. |  |
| **The envisaged time limits for erasure of the different categories of Personal Data**  Please specify how long you think the Personal Data will be retained for, where possible. |  |
| **General description of technical and organisational security measures**  Where possible, please describe the measures put in place under Article 32(1) GDPR. |  |
| **Authorised Sub-Processors**  List the sub-processors who will process Personal Data. |  |

**SCHEDULE 5**

**FORMS**