Dated

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Consultancy Agreement

Gosport Borough Council (Council) (1)

and

……………………………{consultant) (2)

**Michael Lawther**

**Borough Solicitor**

**Gosport Borough Council**

**Town Hall**

**High Street**

**Gosport PO12 1ED**

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**THIS AGREEMENT** is dated

Parties

1. Gosport Borough Council office is at Town Hall, High Street, Gosport, Hampshire , PO12 1EB, United kingdom (**Council**); and
2. of (**Consultant**).

Agreed terms

# Interpretation

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

## Definitions:

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

Commencement Date: {. . .}.

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

Confidential Information: information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of the Council for the time being confidential to the Council and trade secrets including, without limitation and including (but not limited to) information that the Consultant creates, develops, receives or obtains in connection with their Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

Data Protection Legislation:: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation (*(EU) 2016/679*) and any other directly applicable European Union regulation relating to privacy.

Engagement: the engagement of the Consultant by the Council on the terms of this agreement.

Insurance Policies: professional indemnity insurance with cover of not less than £2,000,000

Intellectual Property Rights: copyright and neighbouring and related rights in the Works

Services: the services provided by the Consultant in a consultancy capacity for the Council in accordance with the specification set out in the Invitation for Tender and contractor’s proposal as more particularly described in the Schedule 1.

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

UK Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.

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

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

## A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

## Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

## Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

## The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

# Term of engagement

## The Council shall engage the Consultant and the Consultant shall provide the Services on the terms of this agreement.

## Time is of the essence for all times, dates and periods specified in this agreement or substituted for them.

## The Engagement shall be deemed to have commenced on the Commencement Date and shall continue unless and until terminated:

### as provided by the terms of this agreement; or

### by either party giving to the other not less than four weeks' prior written notice.

# Duties and obligations

### 3.1 During the Engagement the Consultant shall provide the Services with all due care, skill and ability and use their best endeavours to promote the interests of the Council;

## The Consultant shall use reasonable endeavours to ensure that [he][she] is available at all times on reasonable notice to provide such assistance or information as the Council may require.

## Unless [he][she] has been specifically authorised to do so by the Council in writing, the Consultant shall not:

### have any authority to incur any expenditure in the name of or for the account of the Council; or

### hold [him][her]self out as having authority to bind the Council.

## The Consultant shall comply with all reasonable standards of safety and comply with the Council’s health and safety procedures from time to time in force at the premises where the Services are provided and report to the Council any unsafe working conditions or practices.

## The Consultant shall comply with the Council's policies on anti-harassment and bullying.

## The Consultant may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that:

### the Council will not be liable to bear the cost of such functions; and

### at the Council’s request the third party shall be required to enter into direct undertakings with the Council, including with regard to confidentiality.

## The Consultant shall:

### comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);

### not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

### comply with the Council's Anti-bribery and Anti-corruption Policies (**Relevant Policies**);

### promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Consultant in connection with the performance of this agreement;

### ensure that all persons associated with the Consultant or other persons who are performing services in connection with this agreement comply with this clause 3.9; and

### within 12 months of the date of this agreement, and annually thereafter, certify to the Council in writing, their compliance with this clause 3.9. The Consultant shall provide such supporting evidence of compliance as the Council may reasonably request.

## Failure to comply with clause 3.8 may result in the immediate termination of this agreement.

# Fees

## The Council shall pay the Consultant a fee of plus VAT for the Services. The fee shall be payable in three instalments on completion to the following milestones

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

## The Council shall be entitled to deduct from the fees (and any other sums) due to the Consultant any sums that the Consultant may owe to the Council at any time.

## Payment in full or in part of the fees claimed under clause 4 or any expenses claimed under clause 5 shall be without prejudice to any claims or rights of the Council against the Consultant in respect of the provision of the Services.

# Confidential information

## The Consultant acknowledges that in the course of the Engagement [he][she] will have access to Confidential Information. The Consultant has therefore agreed to accept the restrictions in this clause 5.

## The Consultant shall not (except in the proper course of their duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use their best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:

### any use or disclosure authorised by the Council or required by law; or

### any information which is already in, or comes into, the public domain otherwise than through the Consultant’s unauthorised disclosure.

## At any stage during the Engagement, the Consultant will promptly on request return all and any Council Property in their possession to the Council.

# Data protection

## The Council will collect and process information relating to the Consultant in accordance with the privacy notice which is annexed to this Agreement.

## The Consultant and the Council acknowledge that for the purposes of the Data Protection Legislation, the Council is the data controller and the Consultant is the data processor.

## The Consultant and the Council will comply with the Data Protection Legislation.

## The Consultant shall, in relation to any Personal Data processed in connection with the Engagement:

### Process that Personal Data only on written instructions of the Council.

### Keep the Personal Data confidential.

### Comply with the Council's data protection policy.

### Comply with the Council's reasonable instructions with respect to processing Personal Data.

### Assist the Council cost in responding to any data subject access request and to ensure compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, privacy impact assessments and consultations with supervisory authorities or regulators.

### Notify the Council without undue delay on becoming aware of a Personal Data breach or communication which relates to the Council's or Consultant's compliance with the Data Protection Legislation.

### At the written request of the Council, delete or return Personal Data and any copies thereof to the Council on termination of the Engagement unless required by the Data Protection Legislation to store the Personal Data.

### Maintain complete and accurate records and information to demonstrate compliance with this clause 8 and allow for audits by the Council or the Council's designated auditor.

## The Consultant shall ensure that he has in place appropriate technical or organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures. Such measures may include, where appropriate:

### pseudonymising and encrypting Personal Data.

### ensuring confidentiality, integrity, availability and resilience of its systems and services

### ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident

### regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it.

## The Council does not agree to the Consultant appointing any third party processor of Personal Data under this agreement

## The Consultant shall have personal liability for and shall indemnify the Council for any loss, liability, costs (including legal costs), damages, or expenses resulting from any breach by the Consultant of the Data Protection Legislation, and shall maintain in force full and comprehensive Insurance Policies.

# Intellectual property

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

## The Consultant undertakes:

### to notify to the Council in writing full details of any Inventions promptly on their creation;

### to keep confidential details of all Inventions;

### whenever requested to do so by the Council and in any event on the termination of the Engagement, promptly to deliver to the Council all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Works and the process of their creation which are in their possession, custody or power;

### not to register nor attempt to register any of the Intellectual Property Rights in the Works, nor any of the Inventions, unless requested to do so by the Council; and

### to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the Works and the Inventions has passed, or will pass, to the Council.

## The Consultant warrants to the Council that:

### he has not given and will not give permission to any third party to use any of the Works or the Inventions, nor any of the Intellectual Property Rights in the Works;

### he is unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and

### the use of the Works or the Intellectual Property Rights in the Works by the Council will not infringe the rights of any third party.

## 7.4 The Consultant agrees to indemnify the Council and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Council, or for which the Council may become liable, with respect to any intellectual property infringement claim or other claim relating to the Works or Inventions supplied by the Consultant to the Council during the course of providing the Services. The Consultant shall maintain adequate liability insurance coverage and ensure that the Council’s interest is noted on the policy, and shall supply a copy of the policy to the Council on request. The Council may at its option satisfy this indemnity (in whole or in part) by way of deduction from any payments due to the Consultant.

## 7.5 The Consultant waives any moral rights in the Works to which they now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such Works or other materials infringes the Consultant’s moral rights.

## The Consultant acknowledges that, except as provided by law, no further fees or compensation other than those provided for in this agreement are due or may become due to the Consultant in respect of the performance of their obligations under this clause 9.

## The Consultant undertakes, at the expense of the Council, at any time either during or after the Engagement, to execute all documents, make all applications, give all assistance and do all acts and things as may, in the opinion of the Head of Planning Services be necessary or desirable to vest the Intellectual Property Rights in, and to register them in, the name of the Council and to defend the Council against claims that works embodying Intellectual Property Rights or Inventions infringe third party rights, and otherwise to protect and maintain the Intellectual Property Rights in the Works and the Inventions.

## The Consultant irrevocably appoints the Council to be their attorney in their name and on their behalf to execute documents, use the Consultant’s name and do all things which are necessary or desirable for the Council to obtain for itself or its nominee the full benefit of this clause.

# Insurance and liability

## The Consultant shall have personal liability for and shall indemnify the Council for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Consultant of the terms of this agreement including any negligent or reckless act, omission or default in the provision of the Services and shall accordingly maintain in force during the Engagement full and comprehensive Insurance Policies.

## The Consultant shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to the Council and that the level of cover and other terms of insurance are acceptable to and agreed by the Council.

## The Consultant shall on request supply to the Council copies of such Insurance Policies and evidence that the relevant premiums have been paid.

## The Consultant shall notify the insurers of the Council’s interest and shall cause the interest to be noted on the Insurance Policies together with a provision to the effect that, if any claim is brought or made by the Council against the Consultant in respect of which the Consultant would be entitled to receive indemnity under any of the Insurance Policies, the relevant insurer will indemnify the Council directly against such claim and any charges, costs and expenses in respect of such claim. If the relevant insurer does not so indemnify the Council, the Consultant shall use all insurance monies received by him to indemnify the Council in respect of any claim and shall make good any deficiency from their own resources.

## The Consultant shall comply with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Consultant is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Consultant shall notify the Council without delay.

# Termination

## Notwithstanding the provisions of clause 2.2, the Council may terminate the Engagement with immediate effect with no liability to make any further payment to the Consultant (other than in respect of amounts accrued before the Termination Date) if at any time the Consultant:

### commits any serious or repeated breach or non-observance of any of the provisions of this agreement or refuses or neglects to comply with any reasonable and lawful directions of the Council;

### is in the reasonable opinion of the Council negligent or incompetent in the performance of the Services;

### is declared bankrupt or makes any arrangement with or for the benefit of their creditors or has a county court administration order made against him under the County Court Act 1984;

### commits any fraud or dishonesty or acts in any manner which in the opinion of the Council brings or is likely to bring the Consultant or the Council into disrepute or is materially adverse to the interests of the Council;

### commits any breach of the Council's policies and procedures; or

### commits any offence under the Bribery Act 2010.

## The rights of the Council under clause 9.1 are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this agreement on the part of the Consultant as having brought the agreement to an end. Any delay by the Council in exercising its rights to terminate shall not constitute a waiver of these rights.

# Obligations on termination

On the Termination Date the Consultant shall:

### immediately deliver to the Council all Council Property and original Confidential Information in their possession or under their control;

### subject to the Council's data retention guidelines, irretrievably delete on that the consultant will indemnify the company against all claims other than those arising out of the company's negligence or wilful default. any information relating to the Business of the Council stored on any magnetic or optical disk or memory and all matter derived from such sources which is in their possession or under their control outside the premises of the Council. This obligation includes requiring any Substitute to delete such data where applicable. For the avoidance of doubt, the contact details of business contacts made during the Engagement are regarded as Confidential Information, and as such, must be deleted from personal social or professional networking accounts; and

### provide a signed statement that they have complied fully with their obligations under this clause 12, together with such evidence of compliance as the Council may reasonably request.

# Status

## The relationship of the Consultant to the Council will be that of independent contractor and nothing in this agreement shall render him an employee, worker, agent or partner of the Council and the Consultant shall not hold themselves out as such.

## This agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant shall be fully responsible for and shall indemnify the Council for and in respect of:

### any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law. The Consultant shall further indemnify the Council against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Council in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Council’s negligence or wilful default;

### any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Consultant or any Substitute against the Council arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of the Council.

## The Council may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Consultant.

# Notices

## Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:

### delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or its principal place of business (if a company) or (in the case of the Consultant) their last known address; or

### sent by fax to its main fax number.

## Any notice or communication shall be deemed to have been received:

### if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

### if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;

### if sent by fax, at 9.00 am on the next Business Day after transmission.

## This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

# Entire agreement

## This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

## Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

## Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

## Nothing in this clause shall limit or exclude any liability for fraud.

# Variation

No variation of this agreement or of any of the documents referred to in it shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

# Counterparts

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

# Third party rights

## Except as expressly provided elsewhere in this agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

# Governing law

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

# Jurisdiction

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

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**A S W I T N E S S** the hands of the duly authorised representatives of the parties hereto the day and year first appearing

**SIGNED by…………………………………………………..**

for and on behalf of **Gosport Borough Council**

**SIGNED by…………………………………………….**

For an on behalf of

1. Services