**Date** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2024

**GOSPORT BOROUGH COUNCIL**

and

**[INSERT NAME]**

|  |
| --- |
| **Consultancy Agreement**  for the provision of  **Review of Tree Preservation Orders** |

Gosport Borough Council

Town Hall

High Street

Gosport

Hampshire

PO12 1EB

DNxxxxxx

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PARTIES:

1. **GOSPORT BOROUGH COUNCIL** of Town Hall, High Street, Gosport Hampshire, PO12 1EB (the “**Authority**”); and
2. **[INSERT COMPANY NAME]** (Company/Charity No: [ ]) whose registered address is [INSERT REGISTERED ADDRESS] (the “**Consultant**”);

each being referred to as a “**party**” and together the "**parties**”.

WHEREAS:

1. The Authority wishes to engage the Consultant to provide the Services (as described in Schedule A).
2. The Consultant wishes to provide such services and is willing and able to do so in accordance with the terms and conditions of this Agreement.
3. The parties have agreed to contract with each other in accordance with the terms and conditions set out below.

**IT IS HEREBY AGREED** as follows:

1. DEFINITIONS AND INTERPRETATION
   1. In this agreement the definitions and rules of interpretation in this clause apply (unless the context requires otherwise):

|  |  |
| --- | --- |
| “**Agreement**” | this agreement concluded between the Authority and the Consultant, including (if any) all specifications, Consultant’s proposals, samples, plans, drawings and other documents incorporated or referred to therein. |
| **“Agreement Price”** | the price that is payable to the Consultant by the Authority under this Agreement for the full and proper performance by the Consultant of its part of the Agreement as set out in Schedule C. |
| “**Authorised Officer**” | the person appointed by the Authority and notified in writing to the Consultant to act as the representative of the Authority for all purposes connected with this Agreement, or the authorised representative of such a person. |
| "**Best Value Duty**" | the duty imposed on the Authority by Section 3 of the Local Government Act 1999 in relation to, inter alia, the Services; |
| “**Commencement Date**” | 3 June 2024 (or such other date as the parties may agree). |
| “**Consultant**” | the person and/or company who by this Agreement undertakes to supply the Services to the Authority as provided for in the Agreement. Where the Consultant is an individual or partnership or organisation the expression shall include the personal representatives or employees of that individual or of the partners. |
| “**Data Protection Legislation**” | (i) the GDPR (the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) as defined in section 3(10) of the DPA 2018, supplemented by section 205(4) of the DPA 2018), the Data Protection Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 as the primary piece of data protection legislation in the UK; and (iii) all applicable Law about the processing of personal data and privacy; and any replacement legislation coming into effect from time to time and all applicable laws and regulations relating to the processing of personal data and privacy, including as where applicable the guidance and codes of practice issued by the Information Commissioner. |
| “**Deliverable**” | the work tasks, outputs and deliverables as specified in the work timetable set out in Schedule B. |
| **“DPA 2018”** | the Data Protection Act 2018 (and regulations made thereunder); |
| **“Expiry Date”** | the end of the Agreement Period as set out in clause 2.2. |
| **“Force Majeure Event”** | war, natural flood, pandemic, exceptionally adverse weather conditions, strike or lockout (other than a strike or lock-out which is limited to the Consultant’s Representatives), civil disorder, Act of God, power cuts or delays or other wholly exceptional events outside the control of the parties which could not have reasonably been foreseen or avoided. |
| **“Good Industry Practice”** | using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged as the case may be in the same type of work as that of the Consultant under the same or similar circumstances at the relevant time for such exercise. |
| “**Information**” | has the meaning given under section 84 of the Freedom of Information Act 2000. |
| “**Information Laws**” | the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Data Protection Legislation and any codes of practice and guidance made pursuant to the same as amended or replaced from time to time. |
| “**Insolvent**” | in relation to the Consultant:   1. any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into (or, in the case of such a voluntary arrangement, being proposed); 2. a supervisor, receiver, administrator, administrative receiver or other encumbrancer of a similar nature taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven days) upon the whole or any material part of the Consultant’s assets; 3. a court makes an order that the Consultant be wound up or a resolution for a voluntary winding up of the Consultant is passed; 4. ceasing or threatening to cease to carry on business or being or being deemed to be unable to pay its debts when they become due within the meaning of Section 123 Insolvency Act 1986; or 5. being an individual(s), has a bankruptcy order made against him or compounds with his creditor or comes to any arrangements with any creditors. |
| “**Insurance Policies**” | the insurance policies as defined in clause 8. |
| **“Intellectual Property Rights”** | any and all patents, trade marks, service marks, copyright, moral rights, rights in design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether now or in the future subsisting in the United Kingdom or any other part of the world together with all or any goodwill and accrued rights of action. |
| **"IR35"** | the Government's IR35 regime, as amended from time to time. |
| “**Law**” | any applicable statute or any delegated or subordinate legislation, any duly applicable guidance, code of practice, direction, judgment or determination with which the Authority and/or the Consultant is bound to comply including the Authority’s rules, procedures, guidelines, policies, codes of practice, standing orders, financial regulations and standards from time to time and any EU laws or regulations that are retained in domestic law in accordance with the European Union (Withdrawal) Act 2018. |
| “**Persistent Breach**” | a continuing or series of breaches of any term of this Agreement after the Authority has issued at least one notice of such breach to the Consultant. |
| “**Personal Data**” | has the same meaning as given in the Data Protection Legislation in force from time to time. |
| “**Prohibited Act**” | a. directly or indirectly offering, promising or giving any person working for or engaged by the Authority a financial or other advantage to:   * 1. induce that person to perform improperly a relevant function or activity; or   2. reward that person for improper performance of a relevant function or activity;  1. directly or indirectly requesting, agreeing to receive or accepting any financial or other advantage as an inducement or a reward or improper performance of a relevant function or activity in connection with this Agreement or any other contract with the Authority; 2. committing any offence:-    1. under the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;    2. under legislation creating offences concerning fraudulent acts;    3. at common law concerning fraudulent acts relating to this Agreement or any other contract with the Authority; or    4. defrauding, attempting to defraud or conspiring to defraud the Authority; or 3. committing an offence under sub-section (2) of Section 117 of the Local Government Act 1972; or 4. Committing any of the offences listed in regulation 57(1) of the Public Contract Regulations 2015. |
| **“Proposal/Quote”** | the proposal/quote for the Services provided by the Consultant as set out in Schedule D. |
| **“Services**” | the work to be done and the other obligations of the Consultant as specified in this Agreement, the Specification, Consultant’s Proposal/Quote and all data, reports, drawings, designs, inventions, plans, programs and other material produced or acquired in the course of the performance of the work; |
| “**Specification**” | the specification and scope of work requirements as set out in Schedule A. |
| **"Termination Date"** | the date of termination of this Agreement in accordance with its terms. |
| **"VAT"** | value added tax or any similar or substituted tax. |
| **"Working Day"** | Monday to Friday inclusive of each week excluding bank holidays in England. |

* 1. Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument.
  2. The headings to these conditions shall not affect their interpretation.
  3. Any decision, act or thing that the Authority is required or authorised to take or do under the Agreement may be taken or done by any person authorised, either generally or specifically, by the Authority to take or do that decision, act or thing, provided that upon receipt of a written request the Authority shall inform the Consultant of the name of any person so authorised.
  4. The Schedules to this Agreement form part of (and are incorporated into) this Agreement.
  5. Words in the singular include the plural and in the plural include the singular.
  6. The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”.
  7. Words importing the masculine include the feminine and the neuter.

1. COMMENCEMENT AND DURATION
   1. The Authority shall engage the Consultant and the Consultant shall provide the Services on the terms of this Agreement.
   2. The Agreement shall commence on the Commencement Date and shall remain in force until the Consultant has provided all of the Deliverables to the satisfaction of the Authority, unless it is terminated earlier as provided under the terms of this Agreement (“**Agreement Period**”).
2. STATUS
   1. This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the relationship of the Consultant to the Authority is that of independent contractor and nothing in this Agreement shall render it (or any of its employees or representatives) an employee, worker, agent or partner of the Authority and the Consultant shall not hold itself out as such.
   2. The Consultant shall be fully responsible for and shall indemnify the Authority for and in respect of the following tax, where the recovery is not prohibited by law, arising as a result of any individuals employed or engaged in connection with the Services (including any sub-contractors);
      1. any income tax, VAT liability, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the Consultant in respect of the Services, where such recovery is not prohibited by law. The Consultant shall further indemnify the Authority against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Authority in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Authority's negligence or wilful default; and
      2. any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by any individual or any sub-contractor against the Authority arising out of or in connection with the provision of the Services.
   3. The Authority may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Consultant.
   4. The Consultant is not and shall in no circumstances hold himself out as being authorised to enter into any contract on behalf of the Authority, or in any other way to bind the Authority to the performance, variation, release or discharge of any obligation.
   5. The Services shall be supplied solely in accordance with this Agreement. All other contractual terms which in any way add to, vary or contradict this Agreement upon which the Consultant may seek to rely or otherwise impose on the Authority shall be excluded and not form part of this Agreement (whether or not such other contractual terms post-date these conditions) unless the Authority has specifically agreed in writing to be bound by any such other contractual terms.
   6. The Consultant shall provide the Authority with all information reasonably requested by the Authority to determine whether IR35 and/or the off-payroll working in the public sector rules are applicable in respect of the Consultant, its staff and any persons acting on the Consultant’s behalf.
   7. Where IR35 and/or the off-payroll working in the public sector rules are applicable; the Consultant shall provide the Authority with the information required to allow the Authority to deduct tax and national insurance contributions from the payment they make to the Consultant and paragraph 2.12 of Part 2 to Schedule C shall apply.
3. PERFORMANCE
   1. The Consultant shall during the period of the Agreement carry out the Services to the satisfaction of the Authority with all reasonable skill, care, prudence and foresight and in accordance with:
      1. the provisions of this Agreement;
      2. the Specification, including but not limited to achieving the Deliverables within the timescales set out in the timetable for work at Schedule B;
      3. all applicable Laws;
      4. Good Industry Practice; and
      5. all reasonable instructions of the Authorised Officer, acting in good faith and in accordance with this Agreement.
   2. On request, the Consultant shall produce a timetable of activities to be carried out during the Agreement Period in the performance of the Services.
   3. The Authority reserves the right by notice to the Consultant to modify the quality or quantity of the Services and any alteration to the Agreement Price or Agreement Period arising by reason of such modification shall be agreed in writing between the parties in accordance with clause 21.3 (Variations). Failing agreement the matter shall be determined in accordance with clauses 18.2 to 18.4 (Dispute Resolution).
   4. The Authority shall co-operate with the Consultant to provide information and support reasonably required to enable the Consultant to perform the Services.
   5. The Consultant shall ensure that all individuals employed or engaged in connection with the Service (including any sub-contractors) are of suitable character and are appropriately qualified and experienced in the area of work which they are to perform. The Consultant’s team identified in the Proposal/Quote (if any) (the “**Team**”) shall substantially provide the whole of the Service unless the Authority agrees otherwise.
   6. In respect of the Team the Consultant shall, as far as reasonably practicable, consult the Authority on any proposed change in identity of the Team and shall have reasonable regard for the Authority’s views in respect of any proposed replacement.
   7. During the course of this Agreement the Authorised Officer may inspect and examine the work being carried out on the Authority’s premises without notice at any time.
   8. If any part of the Services is found to be defective or differs in any way from the Specification, other than as a result of a default or negligence on the part of the Authority, the Consultant shall at its own expense carry out the Services again within such time as the Authority may specify.
   9. If the performance of this Agreement by the Consultant is delayed by reasons of any act or default on the part of the Authority or, by any other cause that the Consultant could not have reasonably foreseen or prevented and for which it was not responsible, the Consultant shall be allowed a reasonable extension of time for completion and any reasonable associated costs recompensed to the Consultant as shall be agreed between the parties in writing.
   10. The Authority shall not impose restrictions upon the Consultant as to the manner in which the Services are performed except within the scope of the Specification and the terms of this Agreement.
   11. The Authority shall not prevent the Consultant from undertaking contracts for third parties during the Agreement Period provided however that such other work shall not interfere with or otherwise hinder the performance of the services under this Agreement.
4. WORK ON AUTHORITY PREMISES
   1. If so required for the effective performance of the Services, the Consultant will be allocated appropriate workspace on the premises of the Authority, but may be required to travel to such other place as the Authority may require. Whilst at Authority premises the Consultant shall cause as little interference as possible with other activities and persons on the premises.
   2. Whilst on the premises of the Authority or such other premises at which the Consultant may be required to work, the Consultant shall comply with all relevant Laws and with either the Authority’s or the occupiers of such other premises own policies and procedures.
5. TERMINATION
   1. This Agreement shall terminate automatically on the Expiry Date unless it has been terminated earlier in accordance with its terms. For the avoidance of doubt the Consultant shall not be entitled to any compensation on expiry.
   2. In addition to the parties' rights under any other provision of this Agreement, the Authority may terminate this Agreement at any time by giving the Consultant one (1) month’s written notice. Upon the expiration of the notice the Agreement shall terminate without prejudice to the rights of the parties accrued to the date of termination.
   3. Notwithstanding the provisions of clause 6.2 above, the Authority may terminate this Agreement with written notice having 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:
      1. commits any material breach of any term of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within five (5) days of a written request by the Authority to remedy the same;
      2. commits a breach of any term of this Agreement that results in material damage to the reputation of the Authority;
      3. fails to comply with any of its obligations as regards the Insurance Policies;
      4. commits a Prohibited Act;
      5. commits a Persistent Breach;
      6. sub-contracts the Service or part of the Service in breach of clause 9;
      7. fails to comply with the obligations imposed by clause 21.6; or
      8. becomes Insolvent.
   4. Without prejudice to any other right or remedy, if the Consultant does not provide the Services in accordance with this Agreement the Authority may itself provide or procure the provision of the Services until it is satisfied that the Consultant is able to carry out the Services in accordance with this Agreement or it shall be entitled to terminate the Agreement. The Authority shall be entitled to deduct as damages from any payment due to the Consultant under this Agreement the cost incurred by the Authority in providing or procuring the provision of the Services pursuant to this clause 6.4.
   5. Termination of this Agreement by whatever means shall not prejudice the right of action of either party in respect of any antecedent breach of any of the terms and provisions of this Agreement or the repayment of any sums due.
   6. Any delay by the Authority in exercising its rights to terminate shall not constitute a waiver of these rights.
   7. Upon termination, the Consultant shall be entitled to invoice the Authority for all completed and approved work undertaken prior to such termination and the provisions of clause 7 (Price and Payment) shall apply to the same.
   8. If this Agreement is terminated prior to the Expiry Date, the Authority shall only be liable to pay the Consultant for the proportion of the Services delivered up to the Termination Date. In the event that the Authority has made a payment in advance in respect of a period beyond the Termination Date the amount of any such advance payment shall be repaid by the Consultant within twenty eight (28) days of the Termination Date.
   9. Upon expiry or termination of the Agreement, the Consultant shall, at a date agreed with the Authority, deliver to the Authority all property belonging to the Authority (including all materials, work or records held in relation to the Services) in its possession or under its control.
   10. The Authority may terminate this Agreement at any time upon such notice as it considers reasonable if any of the circumstances under Regulation 73(1) of the Public Contracts Regulations 2015 are satisfied. For the avoidance of doubt the Consultant shall not be entitled to any compensation on such termination.
   11. If a Force Majeure Event prevents either party from performing its obligations under the Agreement in any material respects for a period three (3) consecutive months then, provided that the notification requirements set out in clause 19.2 have been met, without prejudice to any accrued rights or remedies under this Agreement, either party may terminate this Agreement by notice in writing to the other party having immediate effect.
6. PRICE AND PAYMENT
   1. The Agreement Price, payment plan and invoicing requirements are contained at Schedule C.
7. INDEMNITY AND INSURANCE
   1. The Consultant shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of contract, including but without limitation any claim by a third party for damage occurring as a result of the Consultant’s performance of the Services, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its representatives save to the extent that the same is directly caused by or directly arises from the negligence, breach of contract or law by the Authority or its representatives (excluding the Consultant).
   2. The Consultant shall at its own cost take out and maintain with reputable insurers who are authorised by the Financial Service Authority to conduct insurance business or equivalent the following insurance policies (the “**Insurance Policies**”):
      1. throughout the Agreement Period, public liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims arising from the Service;
      2. throughout the Agreement Period, employer’s liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Service; and
      3. from the Commencement Date until the expiration of two (2) years from either the Termination Date or Expiry Date (as applicable), professional indemnity/professional negligence insurance with a limit of cover of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims arising from the Service.
   3. The Consultant shall on request supply to the Authority for inspection documentary evidence that the Insurance Policies are properly in place, adequate and valid and evidence that the relevant premiums have been paid.
   4. The Consultant shall notify the insurers of the Insurance Policies of the Authority's interest and shall cause the interest to be noted on the Insurance Policies.
   5. 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 Authority without delay.
   6. Neither party shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or an additional insured person.
   7. Within thirty (30) days of any claim arising in excess of fifty thousand pounds (£50,000) on any of the Insurance Policies, the Consultant shall notify the Authority of the same including full details of the incident giving rise to such claim.
8. LIMITATION OF LIABILITY
   1. Neither party shall be liable to the other party (as far as permitted by Law) for indirect special or consequential loss or damage in connection with this Agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, use, goodwill or business opportunities whether direct or indirect.
   2. Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Agreement.
   3. The Consultant’s total aggregate liability is unlimited
   4. Notwithstanding any other provisions of this Agreement neither party limits or excludes its liabilities for:
      1. fraud or fraudulent misrepresentation;
      2. death or personal injury caused by its negligence or that of its employees, agents or sub-contractors;
      3. breach of any obligation as to title implied by statute; or
      4. any other act or omission, liability for which may not be limited under any applicable Law.
9. TRANSFER AND SUB-CONTRACTING
   1. The Consultant shall not assign, sub-contract or otherwise dispose of any portion or the whole of the Agreement or the supply of any of the Services without the prior written consent of the Authority.
   2. In the event that the Consultant enters into any sub-contract in connection with this Agreement it shall:
      1. remain responsible to the Authority for the performance of its obligations under this Authority notwithstanding the appointment of any sub-contractor and be responsible for the acts omissions and neglects of its sub-contractors;
      2. ensure all sub-contracts are made in writing;
      3. impose obligations on its sub-contractor in the same terms as those imposed on it pursuant to this Agreement and shall procure that the sub-contractor complies with such terms; and
      4. immediately provide a copy to the Authority, at no charge to the Authority, of any such sub-contract.
   3. The Authority may (and the Consultant shall do all things necessary to assist the Authority to) assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to another party provided that the Authority shall give prior written notice of any assignment or novation to the Consultant and such assignee or novatee shall have the legal capacity and sufficient financial resources to perform the obligations of the Authority under this Agreement.
10. INTELLECTUAL PROPERTY
    1. The Authority retains ownership of all Intellectual Property Rights in all documents provided by the Authority in connection with or arising out of the Agreement. The Consultant shall not acquire any right or title to any Intellectual Property Rights (including rights created during the Agreement Period) belonging to or used under licence by the Authority. The Consultant may obtain or make at his own expense any further copies of such documentation required solely for use by him or his representatives only as necessary to provide the Service and always subject to the provisions of clause 12 (Confidentiality).
    2. The Consultant agrees that the Intellectual Property Rights in any and all documents, reports, plans, drawings, designs, data or other material or deliverables in any format created by the Consultant in the course of and for the purpose of providing the Service are hereby assigned to the Authority and the Consultant shall execute or cause to be executed (by his representatives as necessary) all deeds, documents and acts required to vest such Intellectual Property Rights in the Authority.
    3. The Intellectual Property Rights in all drawings, reports, plans, calculations and other documents provided by the Consultant in connection with the Service shall be vested in the Authority in accordance with clause 11.2 but the Consultant shall have a licence to use such drawings and other documents for any purpose related to the Service. Save as aforesaid, the Consultant shall not make copies of such drawings or other documents nor shall he use the same in connection with the making or improvement of any works other than those to which the Service relates without the prior written approval of the Authority and upon such terms as may be agreed between the Authority and the Consultant.
    4. The Consultant shall not in connection with the performance of the Service use, manufacture, supply or deliver any process, article, matter or thing, the use manufacture supply or delivery of which would be an infringement of any Intellectual Property Rights of the Authority or any third party.
    5. The Consultant shall procure that the provision of the Services shall not infringe any Intellectual Property Rights of any third party.
    6. The Consultant shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that such liabilities have resulted directly from the Authority’s failure properly to observe its obligations under this clause 11.
11. CONFIDENTIALITY
12. 1. Subject to clause 12.3, the parties shall keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their servants, employees, representatives, agents and advisors from making any disclosure to any person of any matters relating hereto.
    2. Except with the prior written consent of the Authority and subject to clause 12.3, the Consultant shall and shall procure that all its servants, employees, representatives, agents and advisers do (so far as it is legally able to do so):
       1. not disclose any Information to any third party (other than its professional advisers for professional purposes) save as required by law or any governmental or other regulatory authority having jurisdiction in the matter at hand;
       2. use information only for the lawful purpose for which it was provided and for no other purpose whatsoever;
       3. not disclose to any person any of the terms or conditions of this Agreement; and
       4. on the written demand, at any time, of the person who provided the Information forthwith return to such person all written Information together with all notes, analyses, compilations, studies, records of other documents prepared by on behalf of such person or the Authority.
    3. Clauses 11 and 12.2 shall not apply to any disclosure of information required by Law, including any requests for information made under the Information Laws.
    4. The Consultant acknowledges that the Authority is subject to transparency obligations which require the Authority to publish certain contract information and materials. Accordingly, and notwithstanding any other term of this Agreement, the Consultant hereby gives its consent for the Authority to publish this Agreement and its schedules in its entirety, including from time to time agreed changes to this Agreement (save and except for such matters as the Authority is by law able to exclude as being confidential, commercially sensitive, or otherwise not in the public interest to disclose), to the general public in whatever form the Authority decides.
    5. The provisions of this clause 12 shall apply throughout the Agreement Period and after its expiry or termination howsoever arising.
13. FREEDOM OF INFORMATION
    1. The Consultant acknowledges that the Authority is subject to obligations under the Information Laws and shall in all respects and at no additional cost to the Authority co-operate promptly with the Authority’s reasonable requests to assist the Authority in complying with its disclosure obligations under the Information Laws.
    2. The Consultant shall ensure that it and any of its servants, employees, representatives, agents, or sub-contractors:
       1. notify the Authority in writing of all requests for Information under the Information Laws that it receives as soon as practicable and in any event within two (2) Working Days of receiving such a request;
       2. upon reasonable request by the Authority, provide the Authority with a copy of all Information in its possession or power in a form that the Authority requires within five (5) Working Days (or such other period that the Authority may reasonably specify) of the Authority’s request; and
       3. provide all assistance as necessary and reasonably required by the Authority to enable the Authority to respond to any request for Information relating to the Agreement within the time for compliance under the Information Laws.
    3. The Consultant shall not respond directly to a request for Information unless it is expressly authorised to do so by the Authority or is required to do so by Law.
    4. Notwithstanding any provisions in the Agreement, the Authority shall determine in its absolute discretion whether the Information is exempt from disclosure in accordance with the Information Laws.
    5. The Consultant acknowledges that the Authority may, acting in accordance with the Department Of Constitutional Affairs’ Code of Practice on The Discharge of the Functions of Public Authorities under the Freedom of Information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the Consultant, or despite having taken the Consultant’s views into account.
    6. Subject to the Consultant's legal obligations (including under the Data Protection Legislation), the Consultant shall at no additional cost to the Authority permit the Authority access to all Information it holds under the Agreement as reasonably required from time to time.
14. DATA PROTECTION
    1. Each party shall ensure that it and its representatives shall, duly observe all their obligations under the Data Protection Legislation, which arises in connection with the performance of this Agreement.
    2. The Consultant shall perform its obligations under this Agreement in such a way as ensure that it does not cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.
    3. The Consultant shall be liable for and shall indemnify the Authority and keep the Authority indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands incurred by the Authority which arise directly from a breach by the Consultant of its obligations under the Data Protection Legislation, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Legislation by the Consultant or its employees, representatives, servants, agents or sub-contractors.
    4. The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.
15. WARRANTIES
    1. The Consultant warrants and represents that:
       1. it has the full capacity and has taken all steps and obtained all approvals to enable it to lawfully enter into and perform its obligations under the Agreement;
       2. all information concerning the Consultant (including its affiliates, sub-contractors and their respective directors, officers, principals, members, partners and employees) which the Consultant has furnished to the Authority in connection with this Agreement and the procurement of the same and/or otherwise relevant to the provision of the Services does not contain any untrue statement of a material fact or omit to state any material fact required to be stated or necessary to make the statements therein not misleading in any material respect;
       3. it is not currently the subject of, or been threatened with any legal or regulatory proceedings in any jurisdiction which may adversely impact upon or otherwise impair its ability to perform its obligations under this Agreement; and
       4. there are no material facts or circumstances in relation to the financial position or operation or constitution of the Consultant which have not been fully and fairly disclosed to the Authority and which if disclosed might reasonably have been expected to affect the decision of the Authority to enter into this Agreement.
    2. For the avoidance of doubt the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Consultant.
16. MONITORING AND REVIEW
17. 1. The Consultant shall co-operate and comply with the Authority’s reasonable processes for the monitoring, review and evaluation of the Services and the Consultant’s obligations under this Agreement and in particular, the Consultant shall submit to the Authority monthly progress reports detailing its adherence to the timetable as specified in Schedule B. The submission and acceptance of such reports shall not prejudice the rights of the Authority under any other conditions of this Agreement.
    2. The Authority and the Consultant shall hold regular meetings (being at least Monthly unless agreed otherwise) in accordance with this clause 16 to review and discuss the progress of the Services and working of this Agreement.
    3. The Consultant shall provide the Authority with access to such documents as the Authority may reasonably require in order to monitor, review and evaluate the Services and the Consultant’s performance under this Agreement. In addition, the Consultant shall keep and maintain such necessary data and information and shall provide such assistance as the Authority may reasonably require to enable the Authority to complete all official returns.
18. PUBLICITY
    1. Each party shall use all reasonable endeavours to ensure that any formal public statements made by a party as to each other’s activities or the performance of the Agreement shall only be made after consultation with the other party.
    2. Neither party shall make use of the other party’s logo without their express written permission.
    3. The Consultant shall not do anything or cause anything to be done which may damage the reputation of the Authority or bring the Authority into disrepute.
19. DISPUTE RESOLUTION
    1. The parties shall endeavour at all times during the period of the Agreement to act in good faith and co-operate with one another so far as appropriate in discharging their respective responsibilities.
    2. In the event of any differences or dispute between the parties to the Agreement with respect to any matter or thing arising out of or relating to the Agreement, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.
    3. If a dispute is not resolved within fourteen (14) days of referral to managerial level under clause 18.2 then either party may refer it to the Authority’s relevant Executive Director or appropriate nominated officer of each party for resolution who shall meet for discussion within fourteen (14) days of referral or longer period as the parties may agree.
    4. In the event that a dispute is not resolved in accordance with 18.2 and 18.3, such dispute shall be referred to a mediator to be agreed upon by the parties or in default of agreement to apply to the Centre for Effective Dispute Resolution (CEDR) (or any successor body) to appoint a mediator.
20. FORCE MAJEURE
    1. If any party is delayed or prevented from performing any of its obligations under this Agreement by a Force Majeure Event then, so long as that Force Majeure Event continues, that party shall be excused from performance of such obligation to the extent it is so delayed or prevented, and the time for performance of such obligation shall be delayed accordingly.
    2. On the occurrence of a Force Majeure Event, the affected party shall notify the other party as soon as practicable. Such notification shall contain details of the Force Majeure Event, including evidence of its effect on the obligations of the affected party and any action proposed to mitigate its effect.
    3. As soon as practicable following such notification, the parties shall consult each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the impact of the Force Majeure Event and facilitate continued performance of this Agreement.
    4. The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer delays or prevents the affected party from complying with its obligations under this Agreement. Following such notification (subject to termination under clause 6.11 (Termination on Force Majeure), this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
    5. For the duration of any suspension of the Consultant’s obligations under this clause 19, the Authority shall only be liable to pay the Consultant an amount that reflects the reduced Services (if any) being performed.
21. GENERAL
22. 1. The Consultant shall to the extent reasonably practicable co-operate with and assist the Authority in fulfilling its Best Value Duty
    2. The Consultant shall comply at all times with the Health and Safety at Work etc. Act 1974 and all other Laws pertaining to health and safety of employees and other affected persons including, but not limited to, the Management of Health and Safety at Work etc. Regulations 1999, the Reporting of Injuries, Diseases & Dangerous Occurrences Regulations 2013 and all other health, safety and welfare requirements applicable to the Services included those detailed in the Specifications. The Consultant shall also ensure that his employees, sub-contractors, servants, representatives and agents observe any local arrangements for fire, health, safety, welfare, hygiene and security.
    3. The Agreement may only be varied with the express written agreement of the parties signed by an authorised signatory of the same. No terms or conditions put forward at any time by the Consultant shall form any part of the Agreement.
    4. In the performance of the Services and in its dealings with members of the general public, the Consultant shall not unlawfully discriminate against any person within the meaning and scope of the provisions of the Equality Act 2010 and all other anti-discrimination legislation or any statutory modification or re-enactment thereof relating to non-discrimination and shall ensure that the provisions of the Human Rights Act 1998 are complied with as if the Consultant were a public body (as defined in the Human Rights Act 1998). The Consultant shall take all reasonable steps to secure the observance of this clause 21.4 by all servants, employees, representatives, sub-contractors or agents of the Consultant employed or engaged in the provision of the Services.
    5. The Consultant acknowledges that the Authority has a duty under the Counter Terrorism and Security Act 2015 (“**CTSA 2015**”) to have due regard to the requirement to prevent people from being drawn into terrorism (the Prevent Duty). The Consultant shall, and shall procure that its servants, employees, representatives, sub-contractors or agents shall, give all reasonable assistance and support to the Authority in meeting its duty as a specified authority pursuant to the CTSA 2015 (and all regulations made thereunder) and the Consultant shall have regard to the statutory guidance issued under section 29 of the CTSA 2015.
    6. The Consultant must comply with the Authority’s Anti-fraud and Corruption Strategy (as may be in force from time to time) and the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
    7. The Agreement constitutes the entire agreement and understanding of the parties in connection with its subject matter and supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.
    8. Any notice required by this Agreement to be given by a party to the other party shall be in writing and shall be served personally, by email or by sending it by recorded delivery post to the appropriate address notified to each other. Any notice served personally will be deemed to have been served on the day of delivery and any notice sent by post will be deemed to have been served forty-eight (48) hours after it was posted, save where the deemed date of service falls on a day other than a Working Day in which case the date of service will be the following Working Day.
    9. No term or provision of this Agreement shall be considered as waived by any party unless a waiver is given in writing by that party and specifically states that it is a waiver of such term or provision. No waiver shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, clauses or provisions of this Agreement unless (and then only to the extent) that it is expressly stated in that waiver.
    10. It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that the Agreement is not intended to, and does not, give to any person who is not a party to the Agreement any rights to enforce any provisions contained in the Agreement.
    11. If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.
    12. The Agreement shall be governed by the laws of England and Wales and subject to clauses 18.2 to 18.4, the parties submit to the exclusive jurisdiction of the courts of England.

**AS WITNESS** the hands of the duly authorised representative of the Authority and the Consultant the day and year first above written.

|  |
| --- |
| Signed for and on behalf of **GOSPORT BOROUGH COUNTY COUNCIL** by: |
| Name: |
| Title: |
| Signature…………………………………………………… |
| **Director or Duly Authorised Signatory** |
|  |
| Signed for and on behalf of **[INSERT CONSULTANT COMPANY NAME]** by: |
| |  |  | | --- | --- | | Print Name:  Title:  Signature……………………………………………………  **Director or Duly Authorised Signatory** |  | |

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SCHEDULE A: SPECIFICATION

The Consultant will need to visit the sites to assess the location, health and amenity value of the trees. Existing TPO’d Trees are to be assessed using TEMPO methodology (Tree Evaluation Method for Preservation Orders), or any alternative as may be agreed by GBC) for their value, their location plotted and condition surveyed. Any other trees in the locality are also to be assessed for worthiness to be made subject of a TPO.

The Consultant will make a recommendation as to the worthiness of all trees for continued protection. Each review shall be accompanied by an accurate plan, at an appropriate scale, with each tree clearly identified.

Assessments are to be carried out by suitably experienced and qualified persons familiar with TEMPO assessments.

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SCHEDULE B: DELIVERABLES AND TIMETABLE

The Consultant shall ensure provision of the Services in accordance with the Specification and agreed timetable for work outlined below.

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Tasks** | **Deliverable** | **Completion Date** |
| 1 | Site visits | The Consultant will need to visit the sites to assess the location, health and amenity value of the trees. Existing TPO’d Trees are to be assessed using TEMPO methodology (Tree Evaluation Method for Preservation Orders), or any alternative as may be agreed by GBC) for their value, their location plotted and condition surveyed. Any other trees in the locality are also to be assessed for worthiness to be made subject of a TPO. | 30/08/2024 |
| 2 | Report of results of assessment | The Consultant will make a recommendation as to the worthiness of all trees for continued protection. Each review shall be accompanied by an accurate plan, at an appropriate scale, with each tree clearly identified. | 30/09/2024 |
| 3 | Completion of all tasks and Deliverables | All tasks complete and Deliverables submitted to Authority for approval | 30/09/2024 |

The Consultant must be available as required to attend face to face meetings or teleconferences with the Authority on issues relating to the above areas of work, in addition to any meetings to be attended under clause 16.

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SCHEDULE C: AGREEMENT PRICE-

References to paragraphs in this Schedule refer to paragraphs within this Schedule C unless stated otherwise. References to clauses in this Schedule refer to clauses in the main body of this Agreement unless stated otherwise.

1. Calculation of the Agreement Price
   1. The agreed total Agreement Price shall be the fixed sum of **£[ ]** ([INSERT AMOUNT IN WORDS]) exclusive of VAT and inclusive of all expenses, and which shall be paid on the basis of the Payment Profile as set out below.

**Payment Profile:**

|  |  |  |
| --- | --- | --- |
| **Payment Number** | **Trigger** | **Amount** |
| 1 | *Consultant's production and submission to the Authority of the reports following the review and assessment of the trees in accordance with paragraph x of Schedule A (Specification)*"] | 100 % of the total Agreement Price |

* 1. The Consultant shall submit an invoice for the Amount specified in the Payment Profile within thirty (30) days of the Trigger set out in the Payment Profile above and the Authority shall pay the Consultant in accordance with the invoice and paragraph 2.4 unless paragraph 2.6 applies.
  2. If the Trigger has not been achieved by the Date set out above, the Consultant shall not be entitled to invoice the Authority for the amount specified without written agreement by the Authority.
  3. All payments will be made in accordance with the Authority’s invoice policy. Invoices shall be submitted to the Authority’s Accounts and Purchasing Team (via email to: [accounts.payable@gosport.gov.uk](mailto:accounts.payable@gosport.gov.uk)), a copy of which is to be provided via email to the Authorised Officer.

1. Payment
   1. The Consultant shall bear its own expenses incurred in the course of providing the Services under this Agreement.
   2. All invoices submitted by the Consultant shall include clear details of the Services being invoiced for and shall show:
      1. an Authority contact name and address;
      2. the Consultant's name and address;
      3. the Consultant's bank details;
      4. the Purchase Order number;
      5. a unique invoice number;
      6. full breakdown of the Service provided; and
      7. VAT charged and VAT number (if applicable).
   3. When submitting invoices for payment, the Consultant shall ensure that:
      1. the email contains the word 'Invoice' in the subject field;
      2. each invoice is sent as an attachment, and not within the body of the email;
      3. each attachment to the email only contains one invoice; and
      4. all invoice attachments are in PDF or TIFF format.
   4. Where the Consultant submits an invoice to the Authority in accordance with paragraph 1.2, the Authority will consider and verify that invoice within seven (7) days of receipt of the invoice
   5. Within seven (7) days of the receipt of the invoice, the Authorised Officer shall advise the Consultant in writing of any discrepancy between the amount stated in the invoice and the amount properly due to the Consultant in accordance with this Agreement, which shall take into account any adjustments made. The Authority shall pay to the Consultant such amount as properly due under such invoice no later than a period of thirty (30) days from the date on which the Authority has determined the correct amount to be paid under the invoice.
   6. Subject to paragraphs 3 (Disputed Sums), where the Authority fails to settle an invoice in full within thirty (30) days of the date the invoice was verified by the Authority in accordance with paragraph 2.4 and / or 2.5 (as appropriate), the Consultant shall be entitled to charge interest on any amount outstanding in accordance with paragraph 4 (Interest on Overdue Payments).
   7. Where the Authority fails to comply with paragraph 2.4the invoice shall be regarded as valid and undisputed seven (7) days after the date on which it was received by the Authority.
   8. The Authority shall make all payments to the Consultant via the Bankers’ Automated Clearing Service (“BACS”).
   9. Where the Consultant fails without due cause to provide verifiable records to the reasonable satisfaction of the Authorised Officer to evidence the amounts stated in the invoice then the Authority shall be entitled to withhold payment until such time as such verifiable records are provided.
   10. The Authority shall pay to the Consultant such VAT that may be chargeable by the Consultant in connection with the provision of the Service and the Consultant shall issue a tax invoice in respect thereof. The Consultant shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Consultant 's failure to account for, or to pay, any VAT relating to payments made to the Consultant under this Agreement.
   11. The Consultant shall ensure that in all contracts entered into with sub-contractors in respect of this Agreement;
       1. contains the same terms with regard to payment as are set out in paragraph 2.4 to 2.8; and
       2. contains a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards to have the same effect as set out in paragraph 2.4 to 2.8.
   12. Where Agreement Clause 3.7 applies, the Authority shall calculate the Income Tax and primary (employee) National Insurance Contributions (NICs) and pay them to HMRC.  The Authority shall deduct these amounts from the Consultant’s fee for the work provided by the Consultant, its staff and any persons acting on the Consultant’s behalf.
   13. For the avoidance or doubt, any additional expenses incurred by the Consultant in connection with the provision of the Services exceeding the fixed Agreement Price set out at Schedule C shall not be recoverable from the Authority.
2. Disputed Sums
   1. Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be dealt with in accordance with clause 18 (Dispute Resolution).
   2. Interest due on any sums in dispute shall not accrue until the earlier of 30 days after resolution of the dispute between the parties, or receipt of the decision of the mediator in accordance with clause 18 (Dispute Resolution).
   3. The Consultant shall not suspend the supply of the Services if any payment is overdue.
3. Interest on Overdue Payments
   1. Either party shall pay interest on all overdue undisputed sums properly invoiced under this Agreement at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998 accruing on a day to day basis from the due date up to the date of actual payment whether before or after judgment.

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SCHEDULE D: CONSULTANT’S PROPOSAL/QUOTE

**[TO BE INSERTED]**

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SCHEDULE E: DATA PROCESSOR OBLIGATIONS

1. Data Processor Obligations
   1. In respect of Personal Data that the Consultant processes on behalf of the Authority in connection with this Agreement, the Consultant shall and shall procure that its Representatives shall;
      1. solely process the Personal Data for the purposes of fulfilling its obligations under this Agreement and in compliance with the Authority’s written instructions as set out in this Agreement and as may be specified from time to time in writing by the Authority;
      2. notify the Authority immediately if any instructions of the Authority relating to the processing of Personal Data are unlawful;
      3. not transfer to or access any Personal Data from a country outside of the United Kingdom without the prior written consent of the Authority;
      4. comply with the Authority’s instructions in relation to transfers of Personal Data to a country outside of the United Kingdom unless the Consultant is required pursuant to applicable Laws to transfer Personal Data outside the United Kingdom, in which case the Consultant shall inform the Authority in writing of the relevant legal requirement before any such transfer occurs unless the relevant Law prohibits such notification on important grounds of public interest;
      5. take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data and ensure that all Staff used by the Consultant to process Personal Data are subject to legally binding obligations of confidentiality in relation to the Personal Data;
      6. ensure that none of the Consultant’s Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
      7. not engage any sub-contractor to carry out any processing of Personal Data without the prior written consent of the Authority provided that notwithstanding any such consent the Consultant shall remain liable for compliance with all the requirements of this Agreement including in relation to the processing of Personal Data;
      8. ensure that obligations equivalent to the obligations set out in this Schedule E are included in all contracts between the Consultant and permitted sub-contractors who will be processing Personal Data and who have been approved in accordance with paragraph 1.1.7 of this Schedule E;
      9. take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data taking into account the harm that might result from such unauthorised or unlawful processing, loss, destruction or damage and the nature of the Personal Data to be protected including without limitation, all such measures that may be required to ensure compliance with the Data Protection Legislation;
      10. upon request provide a written description of the technical and organisational measures employed by the Consultant pursuant to paragraph 1.1.9 of this Schedule E (within the timescales required by the Authority) and if the Authority does not consider that such measures are adequate to enable compliance with the Data Protection Legislation, implement such additional measures as may be specified by the Authority (acting reasonably) to ensure compliance;
      11. taking into account the nature of the data processing activities undertaken by the Consultant, provide, at no cost to the Authority, all possible assistance and co-operation (including without limitation putting in place appropriate technical and organisational measures) to enable the Authority to fulfil its obligations to respond to requests from individuals exercising their rights under the Data Protection Legislation, including (without limitation):
          1. notifying the Authority within two (2) Working Days, of receiving any request from a Data Subject exercising their rights under the Data Protection Legislation;
          2. complying with the Authority’s instructions in relation to complying with the Data Subject’s rights under the Data Protection Legislation, which may include (without limitation) providing notices to Data Subjects in a format specified by the Authority, rectifying inaccurate Personal Data, ceasing or restricting processing of Personal Data, providing access to Personal Data, permanently deleting or securely destroying Personal Data and providing copies of Personal Data in a format specified by the Authority;
      12. maintain a record of the Consultant’s processing activities in accordance with the requirements of the Data Protection Legislation;
      13. assist the Authority, at no cost to the Authority, in ensuring compliance with the obligations set out in Articles 32 to 36 (inclusive) of the General Data Protection Regulation (or any equivalent legislation in the UK or any subsequent legislation) taking into account the nature of the data processing undertaken by the Consultant and the information available to the Consultant, including (without limitation):
          1. providing information and assistance upon request to enable the Authority to notify Data Security Breaches to the Information Commissioner’s and/or to affected individuals and/or to any other regulators to whom the Authority is required to notify any Data Security Breaches; and
          2. providing input into and carrying out Data Protection Impact Assessments in relation to the Consultant’s data processing activities;
      14. ensure that it has in place appropriate technical and organisational measures to ensure that processing of Personal Data carried out by the Consultant in connection with this Agreement meets the requirements of the Data Protection Legislation and ensures protection of the rights of individuals under the Data Protection Legislation;
      15. notify the Authority immediately and in any event within twenty four (24) hours in writing if:
          1. the Consultant or any sub-contractor engaged by or on behalf of the Consultant suffers a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data; or
          2. the Consultant or any sub-contractor engaged by or on behalf of the Consultant receives any Data Security Breach notification, complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party’s compliance with the Data Protection Legislation

and in each case the Consultant shall provide full co-operation, information and assistance to the Authority in relation to any such Data Security Breach, complaint, notice or communication at no cost to the Authority;

* 1. upon termination of this Agreement, at the discretion of and at no cost to the Authority, delete securely or return all Personal Data to the Authority and delete all existing copies of the Personal Data unless and to the extent that the Consultant is required to retain copies of the Personal Data in accordance with applicable Laws in which case the Consultant shall notify the Authority in writing of the applicable Laws which require the Personal Data to be retained. In the event the Personal Data is deleted or destroyed by the Consultant, the Consultant shall provide the Authority with a certificate of destruction evidencing that the Personal Data has been destroyed or deleted.
  2. make available to the Authority at no cost to the Authority all information necessary to demonstrate compliance with the obligations set out in this paragraph 1 and, upon request, allow the Authority, the Information Commissioner’s Office and its representatives access to the Consultant’s Premises, records and Personnel for the purposes of assessing the Consultant’s compliance with its obligations under this paragraph 1 of Schedule E; and
  3. indemnify the Authority from and against all costs, expenses (including legal and other professional fees and expenses), losses, damages and other liabilities or whatever nature (whether contractual, tortious or otherwise) suffered or incurred by the Authority and arising out of or in connection with any breach by the Consultant or any sub-contractors of this paragraph 1 of Schedule E.
  4. The provisions of paragraph 1 shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

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SCHEDULE F: DATA PROCESSING ACTIVITES

|  |  |  |
| --- | --- | --- |
| **Categories of Data** | Please tick all relevant boxes and add more detail if required: |  |
|  | **Personal Data** |  |
|  | Name | ✓ |
|  | identification number | ☐ |
|  | location data | ✓ |
|  | online identifier (email/IP address) |  |
|  | Other (please insert details): |  |
|  |  |  |
| - |  |  |
|  | **Special Categories of Personal Data** |  |
|  | race | ☐ |
|  | ethnic origin | ☐ |
|  | political opinions | ☐ |
|  | religion | ☐ |
|  | trade union membership | ☐ |
|  | genetics | ☐ |
|  | biometrics (where used for ID purposes) | ☐ |
|  | health | ☐ |
|  | sex life | ☐ |
|  | sexual orientation | ☐ |
|  | **Criminal Offence Data** |  |
|  | allegations | ☐ |
|  | proceedings | ☐ |
|  | convictions | ☐ |
|  |  |  |

|  |  |  |
| --- | --- | --- |
| **Categories of Data Subjects** | Please tick all relevant boxes: |  |
|  | Authority service users/customers | ✓ |
|  | Authority service user/customer next of kin | ☐ |
|  | Authority employees | ✓ |
|  | Authority employees next of kin | ☐ |
|  | Other (please insert details): |  |
|  |  | |
|  |  | |
|  |  |  |

|  |  |  |
| --- | --- | --- |
| **Processing Operations** | Please tick all relevant boxes: |  |
|  | Using data provided by the Authority(s) | ✓ |
|  | Collecting new data from Data Subjects | ☐ |
|  | Transforming data by adding new data collected from service users/customers to data provided by the Authority | ☐ |
|  | Sharing data with anyone other than the Authority | ☐ |
|  | Erasure or destruction of personal data | ✓ |
|  | Other (please insert details): |  |
|  |  | |
|  |  | |
|  |  |  |

|  |  |  |
| --- | --- | --- |
| **Location of Processing Operations** | Please tick one box only: |  |
|  | UK | ✓ |
|  | EEA[[1]](#footnote-1) (European Economic Area) | ☐ |
|  | Outside EEA (European Economic Area) | ☐ |
|  | If outside the EEA please provide details: |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

|  |  |
| --- | --- |
| **Identity of sub-contractors** | *Insert details of all permitted sub-contractors, including full legal name, registered address and location where processing of Personal Data will occur and a description of the processing operations undertaken by each sub-contractor. Please note that you are not permitted to engage any sub-contractors to process this data without prior written Authority approval.* |
|  |  |

|  |  |  |
| --- | --- | --- |
| **Purposes** | *None other than for the propose of fulfilling the contract* | |
|  |  |  |

|  |  |
| --- | --- |
| **Duration** | *The length of the contract only.* |

1. Details of countries in the EEA are available at the following website: [www.gov.uk/eu-eea](http://www.gov.uk/eu-eea) [↑](#footnote-ref-1)