

**Dated 201[ ][[1]](#footnote-0)**

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**Consultancy Agreement**

Between

**THE ROYAL BOROUGH OF KINGSTON UPON THAMES**

And

**[insert name of CONSULTANT COMPANY]**

Agreement Relating To [*insert title of contract* *and remove square brackets*]

***Drafting notes have been inserted as foot notes throughout the document*** ***and in some cases in red text within the clauses themselves****.* ***Please ensure that you read these carefully whilst drafting the contract. Delete all drafting notes once the contract has been prepared and is ready for signing.***

© The Royal Borough of Kingston Upon Thames

Guildhall

High Street,

Kingston Upon Thames

KT1 1EU

Ref: [*INSERT REFERENCE NUMBER, IF APPLICABLE]*

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**THIS AGREEMENT** is dated **201[ ][[2]](#footnote-1)**

**Parties**

**THE ROYAL BOROUGH OF KINGSTON UPON THAMES** whose principal office is at Guildhall, High Street, Kingston Upon Thames, KT1 1EU (**Client**).

[**INSERT FULL COMPANY NAME**] [incorporated and registered in England and Wales with company number [*insert company number*.]] **OR** [a charity registered in England and Wales with charity number (*insert charity number*.) and company number [*insert company number*.]] whose [registered office **OR** principal address] is at [*insert address*] (**Consultant**)[[3]](#footnote-2).

**Background**

The Consultant submitted a tender on [*insert date*.] (reference: [*insert reference if applicable*]) in response to the Client's invitation to tender issued on [*insert date*.] (reference: [*insert reference if applicable*])[[4]](#footnote-3).

The Client has (based on the Consultant’s response to the request for tenders referred to above), appointed the Consultant to supply the Services and the Consultant has agreed to do so on the terms and conditions of this Agreement.

**Agreed Terms**

# Definitions And Interpretation[[5]](#footnote-4)

1.1 The following definitions and rules of interpretation apply in this Agreement:

**Agreement:** the terms and conditions of contract and the Schedules.

**Bribery Act:** 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.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Client Data:** all Documents, information and materials provided by the Client relating to the Services.

**Client's Manager:** the Client's manager appointed in accordance with clause 4.1 and whose details are set out in Schedule 3.

**Commencement Date:** [*insert date*].

**Consultant's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Consultant or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Client.

**Consultant's Manager:** the Consultant's manager for the Services appointed under clause 3.3 and whose details are set out in Schedule 3.

**Consultant's Personnel:** all employees, staff, other workers, agents and consultants of the Consultant and of any sub-contractors who are engaged in the provision of the Services from time to time.

**Consultant's Proposal:** the Consultant's document submitted in response to the Client’s invitation to tender and which is attached as Schedule 5 to this Agreement.

**Data Controller**: shall have the same meaning as set out in the Data Protection Legislation.

**Data** **Processor**: shall have the same meaning set out in the Data Protection Legislation.

**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 GDPR and any other directly applicable European Union regulation relating to privacy.

**Data Subject**: shall have the same meaning set out in the Data Protection Legislation.

**Deliverables:** all Documents, products and materials developed by the Consultant or its agents, subcontractors, consultants and employees in relation to the Services in any form.

**Document:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**EIRs:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**Expiry Date:** [*insert date*].

**Force Majeure Event:** any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Consultant, the Consultant's Personnel or any other failure in the Consultant's supply chain.

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**GDPR**: the General Data Protection Regulation (*(EU) 2016/679*).

**Government Prevent Strategy:** a policy forming part of HM Government’s counter-terrorism strategy, available at:

<http://www.homeoffice.gov.uk/publications/counter-terrorism/prevent/prevent->strategy/prevent-strategy-review?view=Binary

as may be amended from time to time.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Law:** any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply.

**London Living Wage:** the rate which is set as the London Living Wage by the Mayor of London and/or the Greater London Authority and/or another relevant person, body or agency (before tax, other deductions and any increase for overtime), as may be revised from time to time by the Mayor of London, the Greater London Authority and/or another relevant person, body or agency.

**Personal Data**: shall have the same meaning set out in the Data Protection Legislation.

**Pre-existing Materials:** all Documents, information and materials provided by the Consultant relating to the Services which existed prior to the commencement of this Agreement.

**Prohibited Act:** the following constitute Prohibited Acts:

### to directly or indirectly offer, promise or give any person working for or engaged by the Client a financial or other advantage to:

#### induce that person to perform improperly a relevant function or activity; or

#### reward that person for improper performance of a relevant function or activity;

### to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

### to commit any offence:

#### under the Bribery Act;

#### under legislation or common law concerning fraudulent acts;

#### relating to defrauding, attempting to defraud or conspiring to defraud the Client.

### any activity, practice or conduct which would constitute one of the offences listed under clause (c) above, if such activity, practice or conduct had been carried out in the UK.

**Request for Information:** a request for information or an apparent request for information under the Code of Practice on Access to Government Information, FOIA or the EIRs.

**Services:** the services to be provided by the Consultant under this Agreement as set out in Schedule 1 together with any other services which the Consultant provides or agrees to provide to the Client.

**VAT:** value added tax chargeable under English Law for the time being and any similar additional tax.

## Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

## A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## 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.

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

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

## A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

## A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

## A reference to **writing** or **written** includes fax and e-mail.

## Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

## Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail. Where there is any conflict between any of the other schedules and the Consultant’s Proposal the provisions of the relevant schedule(s) will prevail over the Consultant’s Proposal.

# Engagement

## The Consultant shall provide the Services to the Client from the Commencement Date until the Expiry Date and this Agreement shall terminate automatically on the Expiry Date unless extended in accordance with clause 2.2 below.

## The Client may extend this Agreement beyond the Expiry Date by a further period or periods of up to [insert number] months. If the Client wishes to extend this Agreement, it shall give the Consultant at least [insert number] months' written notice of such intention before the Expiry Date. If the Client gives such notice, then the term shall be extended by the period set out in the notice.

# Consultant's Obligations

## The Consultant shall use reasonable endeavours to provide the Services and to deliver the Deliverables to the Client, in accordance with the Specification (Schedule 1) and the Consultant’s Proposal (Schedule 5) in all material respects.

## The Consultant shall meet any performance dates or milestones [specified in Schedule 1 **OR** agreed by the parties from time to time][[6]](#footnote-5). Unless otherwise agreed by the parties, time shall be of the essence in delivering the Services.

## The Consultant shall appoint the Consultant's Manager who shall have authority contractually to bind the Consultant on all matters relating to the Services. The Consultant shall ensure that the same person acts as the Consultant's Manager throughout the term of this Agreement but may replace him from time to time where reasonably necessary in the interests of the Consultant's business.

## The Consultant’s Manager or a duly authorised and competent representative of the Consultant shall be available to meet the Client’s Manager at the intervals set out in Schedule 3 and at all reasonable times as may be required by the Client and the Consultant shall provide such written reports as set out in Schedule 3 or as the Client’s Manager may reasonably require prior to any meeting or generally.[[7]](#footnote-6)

##  [Whilst on the Client’s premises, the Consultant shall and shall ensure that its agents, employees and subcontractors, observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises and that have been communicated to it under clause 4.1(e), provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement][[8]](#footnote-7).

## In providing the Services, the Consultant shall:

### co-operate with the Client in all matters relating to the Services, and comply with all instructions of the Client;

### perform the Services with the best care, skill and diligence in accordance with best practice in the Consultant's industry, profession or trade;

### use personnel who are suitably skilled and experienced to perform tasks assigned to them and in sufficient number to ensure that the Consultant's obligations are fulfilled in accordance with this Agreement;

### ensure that the Services and Deliverables will conform with all descriptions and specifications set out in Schedule 1 and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Consultant by the Client;

### provide all equipment, tools and such other items as are required to provide the Services;

### obtain and at all times maintain all necessary licences and consents and comply with all applicable Laws and regulations;

### hold all Client Data in safe custody at its own risk, maintain the Client Data in good condition until returned to the Client, and not dispose of or use the Client Data other than in accordance with the Client's written instructions or authorisation;

### not do or omit to do anything which may cause the Client to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business and the Consultant acknowledges that the Client may rely or act on the Services;

### if delivering Services at the Client’s premises, observe all of the Client’s policies and procedures in force at such premises as notified to the Consultant from time to time;

### at all times comply with the provisions of the Modern Slavery Act 2015, the Human Rights Act 1998, the Government Prevent Strategy and all equality Laws in force from time to time. The Consultant shall also undertake, or refrain from undertaking, such acts as the Client requests so as to enable the Client to comply with its obligations under the Human Rights Act 1998 and all equality Laws in force from time to time;

### comply with all environmental and other Laws applicable to the performance of its obligations under this Agreement; and

### [ANY OTHER RELEVANT OBLIGATIONS][[9]](#footnote-8).

# Client's Obligations[[10]](#footnote-9)

## The Client shall:

### co-operate with the Consultant in all matters relating to the Services and shall appoint the Client's Manager in relation to the Services who shall have the authority contractually to bind the Client on matters relating to the Services;

### [if relevant, provide, for the Consultant, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises, [office accommodation], data and other facilities as reasonably required by the Consultant for the performance of its obligations under this Agreement];

### provide, in a timely manner, such Client Data and other information as the Consultant may reasonably require, and ensure that it is accurate in all material respects;

### [if relevant, be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from any of its premises in accordance with all applicable Laws, before and during the supply of the Services at those premises, and informing the Consultant of all of the Client's obligations and actions under this clause 4.1(d)];

### [inform the Consultant of all health and safety rules and regulations and any other reasonable security requirements that apply at [any of] the Client's premises where the Services will be delivered **OR** to which any of the Consultant’s Personnel is admitted;][[11]](#footnote-10) and

### [obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Consultant's Equipment, the use of Client Data and the use of the Client's Equipment in relation to the Consultant's Equipment insofar as such licences, consents and legislation relate to the Client's business, premises, staff and equipment].

### [ANY OTHER RELEVANT OBLIGATIONS][[12]](#footnote-11).

# Change Control

## If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.

## If either party requests a change to the scope or execution of the Services, the Consultant shall, within a reasonable time, provide a written estimate to the Client of:

### the likely time required to implement the change;

### any necessary variations to the Consultant's charges arising from the change;

### the likely effect of the change on the Services; and

### any other impact of the change on this Agreement.

## If the Client wishes the Consultant to proceed with the change, the Consultant has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services and any other relevant terms of this Agreement to take account of the change and this Agreement has been varied in accordance with clause 16 (Variation).

## Notwithstanding clause 5.3, the Consultant may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If the Consultant requests a change to the scope of the Services for any other reason, the Client shall not unreasonably withhold or delay consent to it.

# Charges, Payment, London Living Wage And Audit

## The charges for the Services shall be as set out in Schedule 2 (Pricing), and shall be the full and exclusive remuneration of the Consultant in respect of the performance of the Services. Unless otherwise agreed in writing by the Client, the charges shall include every cost and expense of the Consultant directly or indirectly incurred in connection with the performance of the Services.

## The Client shall pay each invoice submitted to it by the Consultant, in full and in cleared funds, within thirty (30) days of receipt to a bank account nominated in writing by the Consultant[[13]](#footnote-12).

## All amounts payable by the Client under this Agreement are exclusive of amounts in respect of VAT chargeable from time to time. Where any taxable supply for VAT purposes is made under this Agreement by the Consultant to the Client, the Client shall, on receipt of a valid VAT invoice from the Consultant, pay to the Consultant such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

## If a party fails to make any payment due to the other party under this Agreement by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above The Bank of England’s base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

## The Consultant shall maintain complete and accurate records of the resources applied to and cost of providing the Services and the Consultant shall allow the Client to inspect such records at all reasonable times on request.

## The Client may at any time, without limiting any of its other rights or remedies, set off any liability of the Consultant to the Client against any liability of the Client to the Consultant, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement.

## Where the Consultant enters into a sub-contract with a supplier or contractor for the purpose of performing this Agreement, it shall cause a term to be included in such a sub-contract that requires payment to be made of undisputed sums by the Consultant to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the sub-contract requirements.

## During the term and for a period of seven (7) years after termination or expiry of this Agreement, the Client (acting by itself or through its representatives) may conduct an audit of the Consultant, including for the following purposes:

* + 1. to verify the accuracy of charges (and proposed or actual variations to them in accordance with this Agreement) and/or the costs of all suppliers;
		2. to review the integrity, confidentiality and security of any data relating to the Client or any service users;

* + 1. to review the Consultant's compliance with the Data Protection Legislation, the FOIA, in accordance with clause 8 (Confidentiality, Freedom of Information and Transparency) and clause 9 (Data Protection) and any other legislation applicable to the Services;

* + 1. to review any records created during the provision of the Services;

* + 1. to review any books of account kept by the Consultant in connection with the provision of the Services;

* + 1. to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources;

## Subject to the Client’s obligations of confidentiality, the Consultant shall on demand provide the Client and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit.

## The Client shall endeavour to (but is not obliged to) provide at least fifteen (15) Business Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.

## The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations relating to any audits, unless the audit identifies a material failure to perform its obligations under this Agreement in any material manner by the Consultant in which case the Consultant shall reimburse the Client for all the Client's reasonable costs incurred in the course of the audit.

## The Consultant shall

1. pay all the Consultant’s Personnel, a wage which is equal to or exceeds the London Living Wage;
2. ensure that all staff employed or engaged by its subcontractors (if any) pay an equivalent hourly wage which is equal to or exceeds the London Living Wage;
3. Where the Consultant’s Personnel are paid the London Living Wage and not a salary higher than the London Living Wage, the Consultant agrees to increase the amount which it pays the Consultant’s Personnel by the same amount as any increase to the London Living Wage within twelve months of the date on which any increase in the London Living Wage is announced by the Greater London Authority.
4. Provide the Client such information concerning the London Living Wage Rate as the Client or its nominees may reasonably require from time to time, such information to be provided as part of the contract management requirements to include evidence that the Consultant is complying with the provisions of this agreement.
5. Co-operate with the Client and provide all reasonable assistance to the Client in monitoring the effect of the London Living Wage Rate.

## Unless stated otherwise in this Agreement, if the London Living Wage increases during the term of this agreement, the Consultant shall not be entitled to adjust the charges and the parties agree and acknowledge that any increases in the London Living Wage anticipated during the term of this agreement have been factored into the Charges.

# Intellectual Property Rights

## The Consultant assigns to the Client, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services (including the Deliverables).

## At its own expense, the Consultant shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement, including securing for the Client all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Client in accordance with clause 7.1.

## The Consultant shall obtain waivers of any moral rights in the products of the Services (including the Deliverables) to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of Law in any jurisdiction.

# Confidentiality, Freedom Of Information And Transparency

## A party (‘R**eceiving Party’**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**‘Disclosing Party’**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under this Agreement, and shall ensure that such employees, agents and subcontractors comply with the confidentiality obligations set out in this clause 8.1 as though they were a party to this Agreement. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by Law, any governmental or regulatory authority or by a court of competent jurisdiction.

## The Consultant acknowledges that the Client is subject to the requirements of the FOIA and the EIRs and the Consultant shall assist and co-operate with the Client (at the Consultant’s expense) to enable the Client to comply with these information disclosure requirements.

## The Consultant shall and shall procure that its staff including its subcontractors:

### transfer any Request For Information received by the Consultant and/or any of the Consultant’s Personnel to the Client as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request For Information;

### provide the Client with a copy of all information in the Consultant’s possession or power in the form that the Client requires within five (5) Business Days (or such other period as the Client may specify) of the Client requesting that information; and

### provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to a Request For Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.

## The Client shall be responsible for determining at its absolute discretion whether the information:

### is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs;

### is to be disclosed in response to a Request For Information, and in no event shall the Consultant respond directly to a Request For Information unless expressly authorised to do so by the Client.

## In no event shall the Consultant respond directly to a Request For Information unless expressly authorised to do so by the Client.

## The Consultant acknowledges that the Client may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the EIRs to disclose information:

###  without consulting with the Consultant; or

### following consultation with the Consultant and having taken its views into account,

provided always that where clause 8.6 (b) applies the Client shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Consultant advanced notice, or failing that, to draw the disclosure to the Consultant’s attention as soon as practicable after any such disclosure.

## The Consultant shall ensure that all information produced in the course of this Agreement or relating to this Agreement is retained for disclosure for six (6) years after expiry or earlier termination and shall permit the Client to inspect such records as requested from time to time.

## The Client, in line with the Government’s ongoing drive to open up the activities of the Public Sector to greater scrutiny, has prepared its transparency agenda and the Consultant hereby agrees that, notwithstanding anything set out in this clause 8 or elsewhere in this Agreement, the Client shall be entitled to publish this Agreement in whole or in part (including from time to time any agreed changes to the Agreement), in whatever form the Client may decide. The Consultant further agrees that the Client may publish any payments made by the Client to the Consultant under this Agreement.

## Clause 8.1 shall survive termination of this Agreement.

# Data Protection

## Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

## Notwithstanding the general obligation in clause 9.1, where the Consultant is processing Personal Data as a Data Processor for the Client as Data Controller, the Consultant shall ensure that it has in place appropriate technical, organisational and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Data Protection Legislation and the Consultant shall:

### process the Personal Data only in accordance with the documented instructions from the Client which may be specific instructions or instructions of a general nature as set out in Schedule 5 to this Agreement or as otherwise notified by the Client to the Consultant (in writing) from time to time and for no other purpose;

### process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by the Data Protection Legislation;

### obtain prior written consent from the Client in order to transfer the Personal Data to any subcontractors, agents or other third parties for the provision of the Services and oblige by way of contract or other binding legal arrangement any such parties to comply with the same data protection obligations as those set out in this clause 9;

### not transfer Personal Data outside of the EU unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

#### the Client or the Consultant has provided appropriate safeguards in relation to the transfer in accordance with Data Protection Legislation as determined by the Client;

#### the Data Subject has enforceable rights and effective legal remedies;

#### the Consultant complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred or, if it is not so bound, uses its best endeavours to assist the Client in meeting its obligations); and

#### the Consultant complies with any reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

### take reasonable steps to ensure the reliability of any of the Consultant's Personnel who have access to the Personal Data;

### ensure that the Consultant's Personnel without appropriate authority do not have access to the Personal Data;

### ensure that all the Consultant's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 9;

### ensure that all the Consultant's Personnel receive an adequate level of training in data protection;

### ensure that the Consultant's Personnel do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Client;

### notify the Client within twenty-four hours if it becomes aware of a breach or alleged breach of the Data Protection Legislation;

### provide the Client with full co-operation and assistance in relation to investigating breaches to include inspection of premises and security arrangements if requested.

### notify the Client (within two (2) Business Days), if it receives a Data Subject Access Request under the Data Protection Legislation or a complaint relating to the Client’s obligations and promptly notify the Client of any breach of the security measures required to be put in place pursuant to this clause 9;

### provide the Client with full co-operation and assistance in relation to any complaint or request made under the Data Protection Legislation including by:

### (i) providing the Client with full details of the complaint or request;

(ii) providing the Client with any information requested by
 the Client within the timescales required by the Client.

## The Consultant shall, upon reasonable notice, allow officers of the Client to have reasonable rights of access at all times to the Consultant’s premises, Consultant’s Personnel and records for the purposes of monitoring the Consultant’s compliance with the Data Protection Legislation including its security requirements.

## The Consultant shall at the written direction of the Client, delete or return Personal Data (and any copies of it) to the Client on termination of this Agreement unless the Consultant is required by Law to retain the Personal Data.

## The provisions of this clause 9 shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

# Indemnity

## The Consultant shall keep the Client indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered/ incurred by the Client as a result of or in connection with:

### any claim made against the Client for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the Services, to the extent that the claim is attributable to the acts or omissions of the Consultant, its employees, agents or subcontractors;

### any claim made against the Client by a third party for death, personal injury or damage to property arising out of, or in connection with, the Services are attributable to the acts or omissions of the Consultant, its employees, agents or subcontractors; and

### any claim made against the Client by a third party arising out of or in connection with the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Consultant, its employees, agents or subcontractors.

## This clause 10 shall survive termination of this Agreement.

# Insurance [[14]](#footnote-13)

11.1 The Consultant shall be liable for any and all losses, liabilities or costs (including reasonable legal costs) incurred by the Client in connection with the Consultant’s performance of the Services and shall maintain in force during the period of this Agreement and for six (6) years thereafter as a minimum the following insurance cover with reputable insurers acceptable to the Client:

11.1.1 Employer’s Liability Insurance of not less than [*insert the relevant amount*] for each and every claim, act or occurrence or series of claims, acts or occurrences; and

11.1.2 Public Liability Insurance of not less than [*insert the relevant amount*] for each and every claim, act or occurrence or series of claims, acts or occurrences.

11.1.3 [Professional Indemnity Insurance of not less than [*insert the relevant amount]* for each and every claim, act or occurrence or series of claims, acts or occurrences.]

11.2 The Consultant shall give the Client, on request, copies of all insurance policies referred to in this clause 11 or a broker's verification of insurance to demonstrate that the appropriate cover as required by this clause 11 is in place, together with receipts or other evidence of payment of the latest premiums due in respect of such insurances.

# Limitation Of Liability

## Nothing in this Agreement limits or excludes either party’s liability for:

### death or personal injury caused by its negligence; or

### fraud or fraudulent misrepresentation; or

### destruction of the Client’s property; or

### breach of clause 7 (Intellectual Property Rights), clause 8 (Confidentiality and Freedom of Information), clause 9 (Data Protection) and clause 21 (Prevention of Bribery); or

### breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable Law.

## Subject to clause 12.1, neither party shall be liable to the other party, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:

### loss of profits;

### loss of sales or business;

### loss of agreements or contracts;

### loss of anticipated savings;

### any indirect or consequential loss.

## Subject to clause 12.1 and clause 12.2, each party’s total liability to the other party, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to:

### [£*insert amount*][[15]](#footnote-14) per claim; and

### [in respect of all claims (connected or unconnected) in any consecutive 12 (twelve) month period, the equivalent of the total charges paid by the Client in that period.][[16]](#footnote-15)

# Termination

## Without affecting any other right or remedy available to it, the Client may terminate this Agreement with immediate effect by giving written notice to the Consultant if:

### the Consultant commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of [*insert number of days*][[17]](#footnote-16) days after being notified in writing to do so;

### the Consultant repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

### the Consultant suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply][[18]](#footnote-17);

### the Consultant commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Consultant with one or more other companies or the solvent reconstruction of the Consultant][[19]](#footnote-18);

### [a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Consultant (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Consultant with one or more other companies or the solvent reconstruction of the Consultant][[20]](#footnote-19);

### [an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Consultant (being a company)][[21]](#footnote-20);

### [the holder of a qualifying floating charge over the assets of the Consultant (being a company) has become entitled to appoint or has appointed an administrative receiver[[22]](#footnote-21)];

### a person becomes entitled to appoint a receiver over the assets of the Consultant or a receiver is appointed over the assets of the Consultant;

### [the Consultant (being an individual) is the subject of a bankruptcy petition or order;][[23]](#footnote-22)

### a creditor or encumbrancer of the Consultant attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Consultant's assets and such attachment or process is not discharged within [14] days;

### any event occurs, or proceeding is taken, with respect to the Consultant in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(c) to clause 13.1(j) (inclusive);

### the Consultant suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; [or]

### [the Consultant (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation][[24]](#footnote-23)[; or]]

### [there is a change of control of the Consultant [ (within the meaning of section 1124 of the Corporation Tax Act 2010)].][[25]](#footnote-24)

## Without affecting any other right or remedy available to it, the Client may terminate this Agreement in whole or in part at any time by giving [*insert number*] [weeks’ **OR** months'] written notice to the Consultant.

## For the purposes of clause 13.1(a), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

### a substantial portion of this Agreement; or

### any of the obligations set out in clauses [7 (Intellectual Property Rights), clause 8 (Confidentiality, Freedom of Information and Transparency), clause 9 (Data Protection) and clause 21 (Prevention of Bribery)].[[26]](#footnote-25)

# Consequences Of Termination

## On termination or expiry of this Agreement:

### the Client shall pay to the Consultant all of the Consultant's outstanding undisputed invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Consultant may submit an invoice, which shall be payable immediately on receipt;

### each party shall, within a reasonable time, return all of the other party’s property in its possession or under its control. Until they have been returned, the party with custody or control of such property shall be solely responsible for their safe keeping;

### the following clauses shall continue in force: clause 7 (Intellectual Property Rights), clause 8 (Confidentiality and Freedom of Information), clause 9 (Data Protection), clause 12 (Limitation of Liability), clause 25 (Notices), clause 26 (Dispute Resolution), clause 27 (Governing Law) and Clause 28 (Jurisdiction).

## Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.

# Force Majeure[[27]](#footnote-26)

## Provided it has complied with clause 15.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

## The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

## The Affected Party shall:

### as soon as reasonably practicable after the start of the Force Majeure Event but no later than [*insert number*] days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and

### use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

## If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than [*insert number*] [weeks **OR** months], the party not affected by the Force Majeure Event may terminate this Agreement by giving [*insert number*] [days **OR** weeks'] written notice to the Affected Party.

## If the Force Majeure Event prevails for a continuous period of more than [*insert number*] months, either party may terminate this Agreement by giving [*insert number*] days' written notice to the other party. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

# Variation

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

# Waiver

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

# Rights And Remedies

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by Law.

# Severance

## If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, subject to clause 19.2, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

## If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

# 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 agrees that it 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.

# Prevention Of Bribery

## The Consultant represents and warrants that neither it, nor to the best of its knowledge any of its employees, agents or sub-contractors, have at any time prior to the Commencement Date:

### committed a Prohibited Act or been formally notified that they are subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

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

## The Consultant shall not during the term of this Agreement:

### commit a Prohibited Act; and/or

### do or suffer anything to be done which would cause the Client or any of the Client's employees, consultants, contractors, sub-contractors or agents to contravene any of the provisions of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

## The Consultant shall during the term of this Agreement:

### establish, maintain and enforce, and require that its sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and

### keep appropriate records of its compliance with its obligations under clause 21.3(a) and make such records available to the Client on request.

## The Consultant shall immediately notify the Client in writing if it becomes aware of any breach of clause 21.1 and/or clause 21.2, or has reason to believe that it has or any of the Consultant's Personnel (including its advisors, agents and sub-contractors) have:

### been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

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

### received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

## If the Consultant makes a notification to the Client pursuant to clause 21.4, the Consultant shall respond promptly to the Client's enquiries, co-operate with any investigation, and allow the Client to audit any books, records and/or any other relevant documentation in accordance with this Agreement.

## If the Consultant is in default under clause 21.1 and/or clause 21.2, the Client may by notice:

### require the Consultant to remove from performance of this Agreement any Consultant's Personnel whose acts or omissions have caused the default; or

### immediately terminate this Agreement.

## Any notice served by the Client under clause 21.6 shall specify the nature of the Prohibited Act, the identity of the party who the Client believes has committed the Prohibited Act and the action that the Client has elected to take (including, where relevant, the date on which this Agreement shall terminate).

# Assignment And Other Dealings

## This Agreement is personal to the Consultant and the Consultant shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the Client which consent shall not be unreasonably delayed or withheld.

## The Client may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement.

# No Partnership Or Agency

## Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute one party the agent of the other party, or authorise one party to make or enter into any commitments for or on behalf of the other party.

## Each party confirms it is acting on its own behalf and not for the benefit of any other person.

# Third Party Rights

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no one other than a party to this Agreement shall have any right to enforce any of its terms.

# Notices

## Any notice or other communication required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to the party required to receive the notice or communication at its address and to the addressee as set out herein or as otherwise specified by the relevant party by notice in writing to the other party:

**For the Client**

Name:

Address:

Email:

**For the Consultant**

Name:

Address:

Email:

## Any notice or other communication provided that it is clearly marked for the attention of the Client’s contact person or the Consultant’s contact person referred to in clause 25.1 (as the case may be) shall be deemed to have been duly received:

(a) if delivered personally, when left at the address referred to in clause 25.1; or

(b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or

(c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed or;

(d) if sent by email upon receipt of a letter sent by first class or recorded delivery post or other next Business Day delivery service confirming the content of the email.

## The provisions of this clause 25 shall not apply to the service of any proceedings or other documents in any legal action.

# Dispute Resolution Procedure[[28]](#footnote-27)

## If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

### either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the [*insert employee title*] of the Client and [*insert employee title*] of the Consultant shall attempt in good faith to resolve the Dispute;

### if the [*insert employee title*] of the Client and [*insert employee title*] of the Consultant are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to the [*insert senior officer title*] of the Client and [*insert senior officer title*] of the Consultant who shall attempt in good faith to resolve it; and

### if the [*insert senior officer title*] of the Client and [*insert senior officer title*] of the Consultant are for any reason unable to resolve the Dispute within [*insert number*] days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than [*insert number*] days after the date of the ADR notice.

## If the Dispute is not resolved within [*insert number*] days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of [*insert number*] days, or the mediation terminates before the expiration of the said period of [*insert number*] days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 27 (Governing Law) and clause 28 (Jurisdiction).

## The parties agree that notwithstanding any Dispute, the Consultant will continue to deliver the Services and the Client will continue to pay for such Services in accordance with this Agreement.

# 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 by the parties and takes effect on the date stated at the beginning of it.[[29]](#footnote-28)

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| EXECUTED  |   |
| by **THE ROYAL BOROUGH OF KINGSTON UPON THAMES** acting by and under the signature of |  |
|  |  |
|  | Signature  |
|  |  |

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| --- | --- |
|  |   |
| …………………………………………Authorised SignatoryName: | ................................. |
|   | SIGNATURE  |
| Position: |  |

 |  |
| **EXECUTED**  |  |
| by **[INSERT NAME OF CONSULTANT]** |   |
| acting by and under the signature of: |   |
| Name: | ................................. |
|   | Signature  |
| Position: |  |
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|   |  |
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**Specification[[30]](#footnote-29)**

**Pricing[[31]](#footnote-30)**

**Price**

[DETAILS OF PRICE, FOR EXAMPLE THE FIXED PRICE OR DAILY RATE.]

**Payment**

[THE PAYMENT SCHEDULE, WHICH SHOULD INCLUDE THE DATES ON WHICH INSTALMENTS ARE TO BE INVOICED AND THE AMOUNT OF EACH INSTALMENT.]

**Contract Management[[32]](#footnote-31)**

1. **Authorised Representatives**
	1. The Client's Manager: [*Insert name, address, telephone number and email address*].
	2. The Consultant's Manager: [*Insert name, address, telephone number and email address*].

1. **Meetings**
	1. Type
	2. Quorum
	3. Frequency
	4. Agenda

1. **Reports**
	1. Type
	2. Contents
	3. Frequency
	4. Circulation list

**Data Processing Instructions[[33]](#footnote-32)**

* + 1. The Consultant shall comply with any further written instructions in respect of processing received from the Client.  Any such further instructions shall be incorporated into this Schedule.

* + 1. **Processing by the Consultant**

* + - 1. **Scope**

DN: This should be a high level, short description of what the processing is about i.e. its subject matter.

* + - 1. **Nature**

DN: The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. Ensure that you set out clearly the kind of processing that will be done by the Data Processor.

* + - 1. **Purpose of processing**

DN: Please be as specific as possible, but make sure that you cover all intended purposes. The purpose might include: employment processing, statutory obligation, recruitment assessment etc.

Please note the GDPR requirements relating to the legal basis and legitimate purposes for processing personal data.

* + - 1. **Duration of processing**

DN: Clearly set out the duration of the processing including dates.

* + - 1. **Types of Personal Data**

DN: Set out categories of personal data to be processed. Personal data is any information relating an identified or identifiable natural person. Examples here include: ID number, location data, on-line identifier, name, address, date of birth, email address, NI number, telephone number, pay, images, biometric data etc.

Please note the GDPR requirements relating to processing special categories of data.

* + - 1. **Categories of Data Subject**

DN: Set out the categories of persons whose data you will be collecting. Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, service users etc

* + - 1. **Data Retention**

DN: You or the processor cannot hold data for indefinitely. You will need a plan for return and destruction of the data once the processing is complete UNLESS there is a requirement under union or member state law to preserve that type of data. Describe how long the data will be retained for, how it be returned or destroyed

**Consultant’s Proposal[[34]](#footnote-33)**

1. *Insert the date in hand only after the last party has signed the agreement.* [↑](#footnote-ref-0)
2. *Insert the date in hand only after the last party has signed the agreement.* [↑](#footnote-ref-1)
3. *Complete by inserting relevant details. The information to be included would normally be as provided in the Consultant’s Proposal. Amend as appropriate if the Consultant is an individual or a partnership or an entity other than a limited liability company. Please refer to guidance notes at the beginning of this template for further guidance.* [↑](#footnote-ref-2)
4. *Complete by inserting relevant details. Amend as appropriate to reflect the procurement exercise undertaken. Please refer to guidance notes at the beginning of this template for direct awards.* [↑](#footnote-ref-3)
5. *Delete any definition that is not used in the document (a word search on a definition will reveal whether it is used or not). Equally, consider whether additional definitions need to be added. In the interests of space, where a defined term is only used in a particular clause, and is defined in that clause, it has not been set out in clause 1.1. If you wish to list all defined terms in clause 1.1 these must be added. Check each definition carefully to make sure it means what you intend it to mean and amend where necessary to reflect the intention of the parties. Be consistent - where a capitalised term is used, don't introduce it without capitals later on or use a different form of words to mean the same thing. Definitions must be consistent thorough out the agreement i.e. definitions in the main body of the agreement and the Schedules must always mean the same thing e.g. use ‘Client’ thorough out and not ‘Client’ in one place and ‘Commissioner’ or ‘Authority’ in others.* [↑](#footnote-ref-4)
6. *Choose the preferred option, delete the other and remove square brackets. If the milestones are included in another document other than Schedule 1, this must be referenced here e.g. if they are included in the Consultant’s Proposal, then that reference should be included here. If agreed milestones are not included in the Specification or the Consultant’s Proposal, then a new schedule must be attached showing the milestones. That schedule must be referenced here.* [↑](#footnote-ref-5)
7. *Amend as appropriate and include all relevant information in Schedule 4.* [↑](#footnote-ref-6)
8. *Delete if this does not apply and remove all references to this clause elsewhere in the template. This clause will apply where the services are being delivered at or from the Client’s premises or where it is expected that the Consultant’s Personnel will be admitted to Client Premises from time to time.* [↑](#footnote-ref-7)
9. *Insert any further obligations relevant to the services with which the Client wants the Consultant to comply. These may include an obligation to observe certain protocols, codes of practice or specific quality and legal standards.* [↑](#footnote-ref-8)
10. *The provisions in square brackets (i.e. sub clauses 4.1 (b), 4.1 (d), 4.1 (e) and 4.1 (f)) apply only where the services will be delivered at or from the Client’s premises. You will need to determine whether or not they apply to the current services and delete or amend as necessary.*  [↑](#footnote-ref-9)
11. *Amend as appropriate.* [↑](#footnote-ref-10)
12. *Insert any further obligations relevant to the services which the Client will be expected to comply with otherwise delete altogether.* [↑](#footnote-ref-11)
13. *The payment terms will need to be amended on a case by case basis to reflect the understanding of the parties in respect of invoicing and payment. The Client’s standard terms are payment in arrears and within 30 days of receipt of invoice. In some cases however, payments are phased or linked to milestones and are made in advance or in arrears within a shorter period than thirty days by agreement of the parties. In other cases, payments are made four weekly or quarterly in advance.* [↑](#footnote-ref-12)
14. *Procurement Lead will need to consult the Client’s Insurance Team on a case-by-case basis and amend this clause as appropriate.* [↑](#footnote-ref-13)
15. The amount to be inserted will need be determined on a case-by-case basis taking into consideration the nature of the services and associated risks. Some contracts set the cap as a percentage of the contract value others use a Pound equivalent. [↑](#footnote-ref-14)
16. *Amend as appropriate. Legal advice must always be sought when amending this clause.* [↑](#footnote-ref-15)
17. *Insert relevant number of days in consultation with your service client.* [↑](#footnote-ref-16)
18. *Ensure that you select the correct option and delete the inapplicable options. The option you select will depend on the legal status of the Consultant i.e. the status of the Consultant inserted under ‘Parties’ at the head of this template.* [↑](#footnote-ref-17)
19. *Wording in square brackets only relevant where the Consultant is a limited liability company.* [↑](#footnote-ref-18)
20. *Only relevant where the Consultant is a limited liability company.* [↑](#footnote-ref-19)
21. *Only relevant where the Consultant is a limited liability company.* [↑](#footnote-ref-20)
22. *Only relevant where the Consultant is a limited liability company.* [↑](#footnote-ref-21)
23. *Only relevant where the Consultant is an individual/sole trader.* [↑](#footnote-ref-22)
24. *Only relevant where the Consultant is an individual/sole trader.* [↑](#footnote-ref-23)
25. *Only relevant where the Consultant is a limited liability company.* [↑](#footnote-ref-24)
26. *Project team to determine which additional clauses to insert here. Legal advice may be sought if required.* [↑](#footnote-ref-25)
27. *Insert relevant number of days/months in consultation with your service client. The number of days to be inserted will depend on the nature of the services and how long the Client or service users are able to be without the service for.* [↑](#footnote-ref-26)
28. *Insert relevant number of days/months and other relevant information in consultation with your service client.* [↑](#footnote-ref-27)
29. *This attestation clause assumes that the contract will not be effected as a deed. If this is not correct, the attestation clause must be amended with Legal advice. Where the Consultant is a limited Liability company, the contract must be signed by a director or the company secretary. Where the Consultant is a partnership then by all partners or a partner authorised to sign documents. Where the Consultant is a sole trader then by that individual witnessed by another person.* *For charities you will need to confirm with the Consultant who will be signing the contract in accordance with their constitution.* [↑](#footnote-ref-28)
30. *To be inserted after award of contract. This will be the Specification included in the RFQ or Invitation to Tender. If the contract is made by direct award, you will need to set out clearly in this schedule what the Client requires.* [↑](#footnote-ref-29)
31. *To be completed after award to include information supplied by the successful bidder OR the pricing that the Client proposes where the contract is a direct award.* [↑](#footnote-ref-30)
32. *To be completed after award of contract with amendments relevant to the contract. Mark as ‘Not Used’ if not relevant.* [↑](#footnote-ref-31)
33. *This schedule must be completed in full and agreed before processing starts. Ideally, it must be completed and issued as part of the RFQ or ITT.* [↑](#footnote-ref-32)
34. *Successful bidder’s proposal to be included after award of contract* [↑](#footnote-ref-33)