Dated: _____20 [ ]

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BRENT

-and-

[ ]

CONSULTANCY CONTRACT FOR THE PROVISION OF
[ ]

Director of Legal & HR Services
London Borough of Brent
Engineers Way
Wembley
HA9 0FJ
Ref: [insert]

ARTICLES OF AGREEMENT

THIS CONTRACT IS MADE this [ ] day of [ ] 20[ ]

BETWEEN

1. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BRENT** of Brent Civic Centre, Engineers Way, Wembley HA9 0FJ ("**the Council**")

2. **[FULL NAME OF CONSULTANCY]** whose company number is [INSERT REGISTERED COMPANY NUMBER] and whose registered office is situated at [INSERT ADDRESS] ("**the Consultant**")

Collectively referred to as "the Parties".

WHEREAS:-

(A) The Council wishes, following a [competitive tender process/quotation process][1], in view of the Consultant's relevant skills, knowledge and experience to engage the Consultant to provide certain Services ("the Services") to the Council.

(B) The Consultant has submitted [it's/a] [Consultant's Proposal/Quotation][2] in response to the Council's [Invitation to Tender/Request for Quotation][3] and is willing to provide such Services to the Council on and subject to the terms and conditions of this Contract.

IT IS HEREBY AGREED AS FOLLOWS:-

(1) The Council and the Consultant hereby agree and declare that these Articles of Agreement and the Schedules listed below at paragraph 2 and attached to the Articles of Agreement shall constitute the entire Contract between the Parties.

(2) The following documents shall form and be read and construed as part of this Contract. The Schedules are: -

[i] Conditions of Contract - **Schedule 1**

[ii] The Services (incl. Council's Project Brief and the Consultant's Proposals) - **Schedule 2**

[iii] Pricing Document - **Schedule 3**

[iv] Contract Programme and Contract Management - **Schedule 4**

[1] Delete as appropriate; the contract value will determine whether a formal tender process was undertaken or a quotation exercise.
[2] Delete as appropriate; see footnote 1 above.
[3] Delete as appropriate; see footnote 1 above.

IN WITNESS whereof this Contract has been signed for and on behalf of the Parties on the day and year first written above:

Signed for and on behalf of the Council
THE MAYOR AND BURGESSES OF)
THE LONDON BOROUGH OF BRENT)
Signed by)

_____

AUTHORISED SIGNATORY/CHIEF OFFICER

Signed for and on behalf of the Consultant
[ ])
[ ])
Acting by its)

_____

DIRECTOR

Acting by its:)

_____

DIRECTOR/COMPANY SECRETARY

[4]**OR**
Acting by its Director in the presence)

of a Witness:)

_____

DIRECTOR

_____

WITNESS

_____

[4] Delete as appropriate

WITNESS ADDRESS

SCHEDULE 1 - CONDITIONS OF CONTRACT

BRENT COUNCIL
REGENERATION AND GROWTH

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Schedule 3 – Pricing Schedule
Schedule 4 – Programme and Contract Management

1. DEFINITIONS AND INTERPRETATION

In the Contract (unless the context otherwise requires):-

1.1 "**Accounting Period**" means a period of four (4) weeks or such other period as may be used at the beginning and end of each financial year by the Council for accounting purposes;

1.2 **Articles of Agreement**" means the form of contract entered into between the Parties relating to the Services to which the Contract and Schedules are annexed;

1.3 "**Authorised Officer**" means [the person appointed by the Council to act on its behalf/ OR INSERT NAME OF AUTHORISED OFFICER][5] and designated as such in **Schedule** 4B or as may be notified in writing by the Council to the Consultant from time to time;

1.4 "**Background IPR**" means, in respect of each Party, the Intellectual Property Rights owned by or otherwise in the possession of that Party that are reasonably regarded as being applicable to the Project and/or the Services at the date of the Contract;

1.4.1 "**Contract Fee**" means the fees payable by the Council to the Consultant as consideration of the performance of the Services as specified in or calculated in accordance with the provisions of **Schedule 3**;

1.5 "**Confidential Information**" means information, data and material of any nature which either Party may receive or obtain in connection with the procurement negotiation and operation of the Contract and:

(a) the release of which is likely to prejudice the interests of the Council or the Consultant respectively; or

(b) which is a trade secret;

1.6 "**Consultant**" means the Consultant of the Services pursuant to the Contract;

1.7 "**Council's Guidelines**" means Brent Council's Constitution, specifically its Contract Standing Orders and Financial Regulations

[5] Delete as appropriate if the identity of the council's authorised officer is known when signing the contract

1.8 "**Contract**" means these conditions of contract between the Council and the Consultant for the provision of the Services and comprises the Articles of Agreement, the Schedules and any other documents (or parts thereof) specified in the Articles of Agreement;

1.9 "**Contract Manager**" means the person designated as such in **Schedule** 4B or as may be notified in writing by the Consultant to the Council from time to time;

1.10 "**Consultant's Proposals**" means the document(s) submitted by the Consultant in response to the Council's [Invitation to Tender/Request for Quotation][6] as attached to **Schedule 2**;

1.11 "**Data Protection Legislation"** the UK Data Protection Legislation and the General Data Protection Regulation, Regulation (EU) 2016/679, as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time).

1.12 "**Default"** means any failure by the Consultant to properly perform any of the terms and conditions of the Contract including the Performance Standards;

1.13 "**Foreground IPR**" means all Intellectual Property Rights resulting from, related to or created in the course of the provision of the Services;

1.14 "**Intellectual Property Rights**" means any patent, patent application, know how, trade mark or name, service mark, design right, registered design, copyright, moral right, rights in commercial or technical information or any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect anywhere in the world;

1.15 ["**Invitation to Tender**"[7]] means the Council's invitation to prospective bidders setting out its requirements in relation to the Services requiring the Consultant to submit its Consultant's Proposals;

1.16 "**Key Personnel**" means, subject to Clause 4.2, those of the Consultant's personnel named as such in the Consultant's Proposals;

1.17 "**Parties**" means the parties to the Contract and their successors and permitted assigns and "Party" means whichever of them is indicated by the context of the reference;

1.18 "**Personal Data**" means personal data as defined by the Data Protection Legislation;

1.19 "**Project Brief**" means the Council's project brief accompanying the [Invitation to Tender/Quotation] setting out its requirements for the provision of the Services to be performed by the Consultant;

[6] Delete as appropriate; contract value will determine whether the procurement was undertaken as a quotation exercise or formal tender.

[7] Delete this definition if you undertook a quotation exercise.

1.20 ["**Request for Quotation**"][8] means the Council's request for a quotation to prospective bidders setting out its requirements in relation to the provision of the Services requiring the Consultant to submit its Consultant's Proposals;

1.21 "**Services**" means all or any part of the activities to be undertaken and completed by the Consultant pursuant to the Project Brief, the Consultant's Proposals and the terms of this Contract as referred to in **Schedule 2** or as amended from time to time in accordance with Clause 2.5;

1.22 **"UK Data Protection Legislation"** means any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation

1.23 "**Variation**" means a variation to the Contract in accordance with Clause 29

1.24 "**VAT**" means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature;

1.25 "**Working Day**" means Monday - Friday, save for Saturday, Sunday and a public holiday in England;

1.26 references to Clauses shall be to the conditions of the Contract contained in Schedule 1 and references to Schedules shall be to the Schedules listed in the Articles of Agreement and references to paragraphs shall be to the relevant paragraphs of the Schedule in which the reference occurs;

1.27 references to the singular shall be deemed to include the plural and vice versa and references in either gender shall be deemed to include the other and the neuter;

1.28 references to any provision of a statute or regulation shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time; and

1.29 headings are inserted for convenience only and shall not affect its construction.

1.30 the documents constituting the Contract are intended to be mutually explanatory. In the event of any conflict between any provision of the conditions of the Contract and a provision of any other Schedule then the conditions of the Contract (Schedule 1) shall take precedence except where the conflicting part of the other Schedule is explicitly expressed to take precedence over any specific part of the Conditions of Contract.

1.31 in the event of a conflict between any provision of Schedule 2 and a provision of any other Schedule then the provision contained in Schedule 2 shall take precedence.

1.32 the Council reserves the right to invite competitive quotations and/or place orders elsewhere for other or complementing services during the term of this Contract. The Consultant shall co-operate to the fullest extent possible with any other consultants appointed to provide such other or complementing services.

[8] Delete this definition if you undertook a tender exercise.

2. THE CONSULTANCY SERVICES

2.1 The Consultant has considerable skill, knowledge and experience in providing services of the types constituting the Services and shall promptly carry out and complete the Services pursuant to Schedule 2, as and when required with all skill, care and diligence as may be expected of a person or an organisation with the experience of the Consultant in accordance with the terms of the Contract and the Project Brief (***"the Performance Standard"***). The Consultant is aware of the purposes for which the Services are required and acknowledges that the Council is reliant upon the Consultant's expertise and knowledge in the provision of the Services.

2.2 The Consultant shall act upon all written instructions issued by the Council's Authorised Officer as soon as reasonably practicable, including but not limited to any Variation in relation to an addition, modification, deferment, omission, reduction from or substitution of any of the Services.

2.3 The Consultant shall ensure that the Services and its performance thereof comply with all the Council's Guidelines and all requirements of any Act of Parliament, statutory instrument or order or any other regulation having the force of law or bye-law and all regulatory requirements and policies of the Council relevant to the Consultant's business and/or the Council's business from time to time in force which are or may become applicable to the Services (including but not limited to the Council's health and safety procedures).

2.4 The Consultant shall keep detailed records of all things done in relation to the provision of the Services and shall provide the Authorised Officer with such reports of its work on the Services at such intervals and in such form as the Authorised Officer may from time to time require, if not so specified within the Project Brief.

2.5 Any request by either Party to amend the scope or execution of the Services shall be dealt with by the Parties in accordance with the clause 29 (Variations).

2.6 No modification may be made to the Contract without the prior written consent of the Council's Authorised Officer in accordance with clause 29 (Variations).

2.7 The Consultant will keep the Council's Authorised Officer fully and promptly informed in writing of all matters in relation to the Services which may have programme, cost or contractual implications.

2.8 The Council and Consultant agree and acknowledge that the Council has relied on, and will be relying on, the Consultant's expertise in carrying out the Services and also on the accuracy of all statements made and advice given by the Consultant in connection with the Services.

2.9 The Consultant shall comply at its own expense with any statutory requirements and industry standards applicable to the provision of the Services.

2.10 The Council will provide the Consultant with all the facilities, resources, information and access to the Council's premises that are reasonably necessary to carry out the Services.

2.11 The Consultant's Contract Manager shall be empowered to act on behalf of the Consultant and shall be available for consultation with the Council's Authorised Officer at all reasonable times.

2.12 The Consultant undertakes to provide the Council with the key deliverables outlined in the Project Brief at **Schedule 2** and detailed in the Contract Programme at **Schedule 4B**.

2.13 The Consultant acknowledges and agrees that time for performance of the Services shall be of the essence and failure to perform the Services accordingly will be a material breach of the Consultant's obligations hereunder.

3. WORKING HOURS AND ADDITIONAL WORK

3.1 Where the Contract Fee or any part of them are calculated by reference to Working Days then, unless otherwise stated in **Schedule** 3 (Pricing Document), the normal working day for the Consultant's personnel shall be deemed to be at least eight (8) hours per day (including meal breaks) and part days shall be paid by reference to one eighth of a day's Contract Fee for each hour actually worked.

3.2 Holidays taken by Key Personnel shall be subject to the prior approval of the Council's Authorised Officer (not to be unreasonably withheld).

3.3 Holiday pay shall not be chargeable to the Council.

3.4 Where additional work is required in addition to the original scope of the Services and/or the Contract Fees look likely to exceed any lump sum fee, capped fee or maximum level specified in **Schedule 3**, the Consultant shall obtain the prior written consent from the Council's Authorised Officer before any such work is carried out or cost incurred.

3.5 All work, and fees therefore, to be undertaken on a time charge basis shall be estimated and agreed in advance between the Parties, in writing, prior to the provision of the Services.

3.6 Claims relating to payment of Contract Fees for additional work shall be submitted no more than 3 months in arrears from the point of expenditure. Claims for Contract Fee made more than 3 months in arrears will not be accepted by the Council.

4. THE CONSULTANT'S OBLIGATIONS AND PERSONNEL

4.1 The Consultant undertakes to provide the personnel necessary for the performance of the Services and that such personnel shall possess the appropriate skills, qualifications and experience of and for the tasks assigned to them, and shall be available at such times as are agreed by the Parties.

4.2 The Consultant shall make the Key Personnel available at all times for the purposes of providing the Services. The Consultant may only make changes in the Key Personnel with the consent of the Council's Authorised Officer (except in the event of the sickness, incapacity or resignation of any member of the Key Personnel) provided that the Council

is notified by the Consultant as soon as reasonably practicable of the absence or departure of such Key Personnel. For the avoidance of doubt, no Contract Fee shall be payable in respect of any period during which the Services are not provided.

4.3 The Consultant shall ensure that all personnel performing the Services for the Council under this Contract with the Consultant includes a term in their appointment stating that any Intellectual Property Rights arising out of or relating to work done by that person for the Consultant shall vest in the Council and that such personnel will have no title, rights or interests whether legal or beneficial in any such Intellectual Property Rights.

4.4 The Consultant shall remove any member of its personnel from involvement in the Services if required to do so by the Council's Authorised Officer (not acting unreasonably or being vexatious), without any liability to the Council and shall fully indemnify the Council in relation thereto, and shall provide at no extra cost a suitable personnel replacement satisfactory to the Authorised Officer as soon as practicable and in any event within two Working Days of the removal.

4.5 For the avoidance of doubt it is expressly stated that the Consultant is an independent contractor and nothing in this Contract shall render it an employee, worker agent or partner of the Council and the Consultant shall not hold itself out as such. It is not the intention of the Parties that the Consultant or the Consultant's personnel's employment shall transfer to the Council and, accordingly, the Consultant shall be responsible for and fully indemnify the Council for and in respect of making appropriate deductions for tax and national insurance contributions from the remuneration paid to its personnel. Where the Consultant is an individual, she/he will have the status of a self-employed person and shall be responsible for tax and National Insurance contributions. The Consultant shall fully indemnify the Council for and in respect of any liability for any employment related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Consultant or the Consultant's personnel, servants or agents out of or in connection with the provision of the Services.

4.6 Any sub-contractors directly appointed by the Consultant (in accordance with **clause** 14) will be under the direct control and supervision of the Consultant at all times and the Consultant will be and remain primarily liable under the Contract for all work subcontracted by him and for acts, defaults or neglect of any sub-contractor, his agents and servants.

5. COUNCIL STAFF

5.1 The Council undertakes that where participation by its own staff is necessary in the performance of the Services such staff shall be available at such times as are agreed by the Parties and shall be properly notified by the Council of the nature of the Services.

6. OFFICE FACILITIES

6.1 The Council shall be under no obligation to provide or pay for any office or other accommodation or facilities to the Consultant except as may be specified in **Schedule 2**.

7. COMPLIANCE WITH LAWS AND COUNCIL POLICIES

7.1 If the Consultant is required to enter the Council's premises during the performance of its obligations under this Contract, the Consultant shall, and shall ensure that its personnel, agents and sub-contractors shall whilst present on the Council's premises:

7.1.1 carry the identity pass issued by the Council at all times;

7.1.2 comply with any requirements and instructions (including but not limited to health and safety and security issues) that may be given by an authorised representative of the Council;

7.1.3 comply with the Council's equal opportunities policies and procedures and all statutory provisions concerning equal opportunities;

7.1.4 comply with any request by an authorised representative of the Council to leave the Council's premises immediately; and

7.1.5 notify the Council as soon as he becomes aware of any health and safety hazards or issues which arise in relation to the Services.

7.2 In the event that any of the Consultant's personnel, employees, agents or sub–contractors fails to comply with any of the obligations of this **clause** 7 the Consultant shall remove such personnel, employee, agent or sub-contractor and provide suitable replacement personnel, in accordance with **clause** 4.4.

7.3 The Consultant acknowledges, and undertakes to inform all its personnel, employees, agents and sub-contractors who will be using the Council's communication facilities that the Council reserves the right from time to time to:

7.3.1 intercept, for the purposes of monitoring and/or recording, any communication made through any system capable of transmitting communications including but not limited to telephone, electronic mail, facsimile, voicemail or internet facility provided by the Council; and

7.3.2 use any information obtained as a result of any intercepted communication for the purposes permitted by the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000.

8. PRICE AND TERMS OF PAYMENT[9]

[GUIDANCE: use these first set of clauses, 8.1 to 8.2.2 for non-construction related consultancy contracts]

8.1 In consideration of and subject to the due performance by the Consultant of the Services, the Council shall pay the Consultant the Contract Fee as set out in **Schedule** 3A; such invoice shall be issued to the Authorised Officer in accordance with the process detailed in **Schedule** 3B together with any correctly charged VAT that is applicable.

[9] Delete clauses 8.1 - 8.2.2 as appropriate depending on whether this consultancy contract is a construction related agreement falling with the Housing Grants, Construction and Regeneration Act 1996 (as amended) - if this act applies use the second set of clauses 8.1 - 8.2.2 and delete the first set accordingly.

8.2 The Consultant shall not be entitled to reimbursement for expenses unless explicitly stated in **Schedule** 3A[10], in which case the Consultant shall be reimbursed for reasonably incurred expenses that have been submitted to, and approved by, the Council's Authorised Officer.

8.2.1 Supporting evidence must be provided with expenses claims and the Council reserves the right not to pay the approved incurred expenses if the relevant supporting evidence is not provided in accordance with **Schedule** 3B.

8.2.2 Any payments made by the Council hereunder, including the final payment under this Contract, shall not prevent the Council from recovering any amount overpaid or wrongfully paid howsoever such payments may have arisen, including, but not limited to those paid to the Consultant by mistake of law or of fact. The Council shall be entitled to withhold from any sums due or which may become due to the Consultant from the Council any amount which on the basis of the Council's bona fide estimate, the Council considers is due from the Consultant. Such estimates shall be binding on the Consultant unless varied by agreement between the Parties or any award, order or judgement given by a competent court.

[GUIDANCE: In the case of a construction related consultancy (e.g. the appointment of an architect, designer, engineer, etc.), the Housing Grants, Construction and Regeneration Act 1996 will apply. The following clauses are suggested in alternative to the previous ones, in order to comply with the provisions of the mentioned Act.]

8.1 In consideration of the Consultant carrying out the Services, the Council will pay to the Consultant the Contract Fee, upon the basis agreed and contained in **Schedule 3A** together with any correctly charged V.A.T. that is applicable.

8.2 Payment for the Services will unless otherwise agreed in writing be made by the Council within thirty (30) days of receipt of a valid invoice and fee account (accompanied by any supporting evidence as may be reasonably requested by the Council's Authorised Officer) following completion of the Services. For the purposes of this Contract, the "**due date**" is the date a valid invoice is received, while the "**final date for payment**," is the 30th day after receipt of a valid invoice. Where stage payments are to be made by the Council to the Consultant, these payments shall be made at the intervals, or on the dates set out in **Schedule 3**.

8.2.1 Without waiver, or limitation, of any rights or remedies the Council will be entitled to withhold, deduct or set-off from any amounts due or owing by the Council to the Consultant in connection with this Contract any losses, costs or damages arising from the Consultant's breach of this Contract, or any other agreement, subject, always to the Council giving the Consultant, not later than five (5) days before the final date for payment of the amount due, a written notice which will specify any amount proposed to be withheld, deducted or set-off, the ground or grounds for such withholding and/or

[10] Officer to determine whether the consultant will be entitled to claim for expenses in addition to their fees; if expenses are payable, please state this in the Pricing Document - Schedule 3.

deduction and the amount of the withholding and/or deduction attributable to each ground.

8.2.2 The consideration payable to the Consultant will be subject to audit by the Council and the Consultant will upon request make available all accounts records and other documents reasonably required for such purpose.

[Guidance: Please note that according to s.112 of the Housing Grants, Construction and Regeneration Act 1996, the Consultant has the right to suspend its performance if a sum due under the Contract is not paid in full by the final date and no effective notice to withhold payments has been served by the Council in accordance with clause 8.2.1. This right is subject to the service of a seven days' notice of the intention to suspend performance.]

8.3 Where the Consultant sub-contracts any part of the Services to a third party, the Consultant is responsible for payments to that third party and in any event shall ensure prompt payment of the sub-contractor's invoice, payable within 30 days of receipt. Full details of any such payment shall be submitted by the Consultant, on its own invoice, to the Authorised Officer.

8.4 Invoices not meeting all of the requirements contained in **Schedule** 3B will not be accepted by the Council and will be returned to the Consultant for re-submission.

8.5 All fees payable under this Contract unless otherwise stated are exclusive of VAT and where applicable must be shown as a separate charge.

8.6 No approval given or payment made by the Council shall absolve the Consultant from any obligation or liability imposed upon the Consultant by any provision of the Contract or otherwise.

9. CONTRACT PERIOD

9.1 The Contract is for a period of [insert period] commencing on [insert date] (the "**Commencement Date**") and (subject to any earlier lawful termination) expiring on [*insert date*] (or completion of the Services if later) (the "**Contract Period**").

9.2 Subject to satisfactory performance by the Consultancy in the provision of the Services, the Council may, by notice in writing, extend the Contract Period so as to enable the completion of the Services, provided that the said notice shall have been given to the Consultant no later than 3 weeks before the end of the initial Contract Period (or such reasonable shorter notice period where the Services are of a relatively short nature). The provision of the Contract will apply (subject to any Variation(s)) throughout any such extended period.

10. RECORDS AND AUDIT

10.1 Without prejudice to the obligation to provide reports contained in **Clause** 2.4, the Consultant shall keep and maintain to the satisfaction of the Council until six (6) years after the Contract has expired or otherwise terminated, records of the work performed, the hours worked and costs incurred by the Consultant in connection with the Services.

The Consultant shall on request afford the Council or its representatives such access to and the right to make copies of those records as may be required by the Council.

11. PERFORMANCE DEFAULT – REMEDIES

11.1 In the event that the Council is of the opinion that the Consultant has committed a Default, then the Council may, without prejudice to its rights under clause 20.2 (termination on default) of the Contract, do one or more of the following:

11.1.1 serve notice on the Consultant ("a Default Notice") requiring the Consultant to remedy the Default within 14 days, or such other period of time as the Council's Authorised Officer may specify.

(i) For the avoidance of doubt, a Default will include a failure to remedy in accordance with this clause 11.1.1;

(ii) In the event that through any Default of the Consultant, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Consultant shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission.

11.1.2 without terminating the Contract, itself provide or procure the provision of part of the Services until such time as the Consultant shall have demonstrated to the reasonable satisfaction of the Council that the Consultant will once more be able to perform such part of the Services in accordance with the Contract.

11.2 Where a Default constitutes a fundamental breach or persistent breach of the Contract and the Council has issued a Default Notice to the Consultant in accordance with clause 11.1.1, the Council may withhold payment of any amount due under this Contract until such time as the Consultant has remedied the Default. Clause 8.2.1/8.2.2 (Price and Terms of Payment) shall apply if the Council withholds any payment due.

11.3 The Council may charge to the Consultant any cost reasonably incurred by the Council and any reasonable administration costs in respect of the provision of any part of the Services by the Council or by a third party engaged by the Council for this purpose to the extent that such costs exceed the payment which would otherwise have been payable to the Consultant for such part of the Services.

11.4 If the Consultant fails to perform any of the Services to the reasonable satisfaction of the Council and such failure is capable of remedy, then the Council shall instruct the Consultant to remedy the failure at the Consultant's own cost and expense (and any damage resulting from such failure) within 14 days or such other period of time specified by the Council.

11.5 In the event that the Consultant fails to comply with clause 11.4 above and such failure is materially adverse to the commercial interests of the Council; the Council may terminate the Contract by notice in writing with immediate effect.

12. INSURANCE

Commented [AH1]: Indemnity and Liability dealt with below under clause 33

[GUIDANCE: Advice should be sought from the Council's Insurance Risk Manager, David Huberman in respect of specifying the insurance levels required from the Consultancy firm - see highlighted figures and insert appropriate levels following confirmation from David.]

12.1 During the Contract Period and for a period of 6 years thereafter (without prejudice to its obligations under the Contract), the Consultant shall:

12.1.1 Employer's liability including personal injury or death of any person arising under a contract of service with the Consultant and/or arising out of any incident occurring during the course of such person's employment in compliance with the Employer's Liability (Compulsory Insurance) Act 1969; such insurance cover shall not be less than £5,000,000 in respect of any one incident and in annual aggregate;

12.1.2 hold **public liability insurance** in respect of liability for death or bodily injury to any person, or loss of or damage to property or any other loss or damage arising out of the performance or attempted or purported performance or non-performance of the Contract in a sum not less than [£5,000,000] per incident with a reputable insurer, sufficient to cover the Consultant's liabilities under this Contract; the terms of the insurance shall include an 'indemnity to principal' provision whereby in the event of any claim in respect of which the Consultant would be entitled to receive indemnity under the policy being brought against the Council, then the insurer will indemnify the Council against such claim and any costs, charges and expenses in respect of such claim; and

12.1.3 hold **professional indemnity insurance** in a sum normal and customary for a consultant in the business in which the Consultant is but in any event not less than [£2,000,000]:

12.2 The Consultant shall whenever required and in any event before commencing work on the Contract produce to the Council satisfactory evidence that there is in force the insurance for which the Consultant is responsible under the Contract. Thereafter the Consultant shall submit evidence at the renewal date(s) of such insurance that the insurance has been renewed and claims handling arrangements as and when these change or expire. The provision of such evidence shall be a **clause precedent** to payment of the Contract Fee.

12.3 If the Consultant shall fail on request to produce to the Council satisfactory evidence that there is in force the insurance that the Consultant is required to effect under the Contract, the Council may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Council from any monies due or which may become due to the Consultant or recover the same as a debt due from the Consultant.

12.4 The Consultant shall with all due diligence conform to the terms and conditions of the said insurances and all reasonable requirements of the insurers in connection with the prosecution and settlement of claims, the recovery of losses and the prevention of accidents. The Consultant shall bear the cost of all exclusions and limitations under the policies of insurance (insofar as they concern risks for which the Consultant is responsible under the Contract).

12.5 The Consultant shall not compromise or waive any claim which the Consultant may have under such insurances which the Consultant may incur under the Contract without the prior written consent of the Council.

12.6 The Consultant shall ensure that its public and/or product, and professional indemnity insurance policies carry an ***'Indemnity to Principals'*** clause.

12.7 Subject to Clause 12.2, if the Consultant has not fulfilled their obligations, then the Council will attempt to pass the claim directly to the appropriate insurer of the Consultant and/or handle the matter itself and then seek an indemnity from the Consultant and/or its insurers as appropriate.

13. <u>WARRANTY</u>

13.1 Without prejudice to the Council's rights (whether under the Contract or otherwise), if any of the Consultant's work is defective in that the Consultant has failed to conform to the requirements of the Contract or the work is not in accordance with sound and generally accepted professional standards then:-

13.1.1 without prejudice to the provisions of **Clause** 13.1.2, the Consultant shall re-perform, if required to do so by the Council, at no cost to the Council any such work which is brought to the Consultant's attention in writing by the Council during the Contract Period and within one (1) year from completion of the Services; and/or

13.1.2 the Council shall be entitled to engage another person to carry out and complete the Services, in whole or in part, and all additional expenditure properly incurred

by the Council in having such services carried out by a third party consultant shall be recoverable by the Council from the Consultant.

13.2 The Services and any documentation, deliverables etc. (whether in paper or electronic form) or other goods supplied under the Contract shall not be affected or made inoperable or more difficult to use by or as a result of any date input or processing in or on them or any system of the Consultant or of the Council to which they relate or on which they are or may be reliant or by which they are or may be affected and regardless of the date on which the Services are carried out or on which any items supplied are operated.

13.3 The Consultant shall ensure that any software, electronic or magnetic media, hardware or computer system used or produced by the Consultant in connection with the Contract shall not cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of the Council on which it is used or with which it interfaces or comes into contact.

14. ASSIGNMENT, SUB-CONTRACTING AND NOVATION

14.1 The Consultant will not assign the whole or any part of the benefit or in any way transfer the obligation of the Contract without the prior written consent of the Council.

14.2 The Consultant will not sub-contract any of the Services without the prior written consent of the Council; such consent shall not be unreasonably withheld. However it shall be a condition of the Council's consent of a Sub-Consultant that the Sub-Consultant shall be prepared to enter into a collateral warranty with the Council at the Council's request in accordance with clause 30 (Sub-Consultant Collateral Warranties) below.

14.3 Where the Council has consented in writing to the Consultant sub-contracting any of the Services, the following provisions will apply:

14.3.1 The Consultant shall be fully responsible for the Services undertaken by Sub-Consultants whom the Consultant appoints, having the same responsibility for the Services undertaken by the Sub-Consultants as if such Services had been undertaken directly by the Consultant;

14.3.2 The Consultant will have sole responsibility for managing and monitoring the performance and quality of its Sub-Consultants and shall provide evidence to the Council during the Contract Period upon request that this responsibility is being fulfilled;

14.3.3 The Consultant shall not be relieved from any liability or obligation under the Contract and shall be responsible for the acts, defaults or neglect of any Sub-Consultant in all respects as if they were the acts, defaults or neglect of the Consultant;

14.3.4 The Consultant shall be responsible for entering in to any agreements with Sub-Consultants as considered necessary and shall ensure that all relevant

material provisions of the Contract are reflected in the Consultant's agreements with all of its Sub-Consultants;

14.3.5 Where the Council reasonably considers it necessary, the Consultant must agree with the Council continuous improvement plans with its Sub-Consultants; and

14.3.6 The Consultant shall be responsible for any fees or expenses claimable by the Sub-Consultants and for any costs incurred by the Consultant in employing the Sub-Consultants; and

14.3.7 Where the Consultant enters into a sub-contract with a Sub-Consultant for the purpose of performing the Contract, it shall cause a term to be included in such sub-contract which requires payment to be made of undisputed sums by the Consultant to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

14.4 The Council may assign, novate or otherwise dispose of its rights and obligations under this Contract provided any assignment, novation or other disposal shall not increase the burden of the Consultant's obligations under this Contract.

15. CONTRACT PROGRAMME AND MANAGEMENT

15.1 The Consultant shall perform the Services in accordance with the programme contained in **Schedule** 4A.

15.2 The management of the Contract shall be in accordance with the provisions of **Schedule** 4B.

16. INTELLECTUAL PROPERTY RIGHTS

16.1 The Background IPR shall remain the absolute property of the owner of such rights at the date of the Contract. No Party will make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of any of the Background IPR of the other Party except under the terms of this Contract, and each Party acknowledges that nothing contained in this Contract shall give it any right, title or interest in or to the Background IPR of the other Party save as granted in this clause 16.

16.2 The Consultant grants to the Council an irrevocable, non exclusive, royalty free licence to use the Consultant's Background IPR with a right to grant sub-licences to such third parties as the Council reasonably requires ("the Transferees") for the purposes of the Project and/or the Contract. The Consultant shall not be liable for any use by the Council or the Transferees of any of the Background Intellectual Property for any purpose other than that for which the same were prepared by or on behalf of the Consultant.

16.3 The Council grants to the Consultant a non exclusive, royalty free licence to use the Council's Background IPR with a right to sub-licence to Sub-Consultants solely for the purposes of the Project and/or the Contract and for the duration of the Contract.

16.4 In consideration of the Contract Fee payable by the Council to the Consultant, all Foreground IPR shall remain the sole, exclusive property of the Council and the Consultant acknowledges that nothing contained in the Contract shall give it any right, title or interest in or to the Foreground IPR save as granted in this clause 16.

16.5 The Council grants to the Consultant a royalty free, non exclusive licence to use the Council's Foreground IPR with a right to sub-licence to Sub-Consultants solely for the purposes of the Project and/or the Contract and for the duration of the Contract.

16.6 The Parties shall when appropriate or applicable execute a formal licence or licences for the purpose of registering the licences granted pursuant to clauses 16.2, 16.3 and 16.5 in such form as may be necessary to give effect to the terms of the Contract. Such licence or licences shall be subject to all the terms of the Contract.

16.7 The Parties shall provide all reasonable assistance to each other when reasonably requested to do so by the other for the purposes of ensuring that each Party receives the full benefit of the licences of Intellectual Property Rights granted under this clause 16.

16.8 Both Parties warrant to the other that:

16.8.1 it is the exclusive legal and beneficial owner of all right, title and interest in its Background IPR and that there are no liens, encumbrances options or other charges over any of them; and

16.8.2 to the best of its knowledge, information and belief the use of its Background IPR by the other Party pursuant to the Contract will not infringe Intellectual Property Rights of any third party.

16.9 Each Party shall inform the other of any infringement of any Intellectual Property Rights as soon as reasonably practicable upon such infringement coming to its notice. The Party that is the owner of such Intellectual Property Rights shall have the sole conduct of any proceedings in relation to them.

16.10 Each Party (the "Indemnifying Party") will indemnify and hold harmless the other Party against any and all liability, loss, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by such other Party in respect of any claim or action that the use of the Indemnifying Party's Background IPR infringes the Intellectual Property Rights of any third party (an "Intellectual Property Infringement") provided that such other Party:

16.10.1 gives notice to the Indemnifying Party of any Intellectual Property Infringement immediately upon becoming aware of the same;

16.10.2 gives the Indemnifying Party the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability

or otherwise settle or compromise or attempt to settle or compromise that claim or action except upon the express instructions of the Indemnifying Party; and

16.10.3 acts in accordance with the reasonable instructions of the Indemnifying Party and gives the Indemnifying Party such assistance as it shall reasonably require in respect of the conduct of the defence (as referred to in 16.10.2).

16.11 The Consultant shall ensure that any copyright materials produced by or on behalf of the Council in connection with the provision of the Services for the Council shall be marked with the following copyright notice "Copyright *[insert Council's standard Copyright statement and year of creation]*. All Rights Reserved".

17. <u>CONFIDENTIALITY</u>

17.1 In respect of any Confidential Information it may receive from the other party ("the Discloser") and subject always to the remainder of this **Clause** 17, each Party ("the Recipient") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:

17.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Contract;

17.1.2 the provisions of this **Clause** 17 shall not apply to any Confidential Information which:-

(i) is in or enters the public domain other than by breach of the Contract or other act or omissions of the Recipient;

(ii) is obtained by a third party who is lawfully authorised to disclose such information; or

(iii) is authorised for release by the prior written consent of the Discloser; or

(iv) the disclosure of which is required to ensure the compliance of the Council with the Freedom of Information Act 2000 (the FOIA) and/or the Environment Information Regulations 2004.

17.2 The Consultant shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Contract:-

17.2.1 is given only to such staff of the Contactor and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;

16.2.2. is treated as confidential and not disclosed (without prior approval from the Council) or used by any staff of the Consultant or such professional advisors or consultants otherwise than for the purpose of the Contract.

17.3 Where it is considered necessary in the opinion of the Council, the Consultant shall, and shall ensure that its personnel or such professional advisors or sub-contractors sign a confidentiality undertaking in a form approved by the Council before commencing work in connection with the Contract. The Consultant shall ensure that its personnel, its professional advisors and any sub-contractors are aware of the Consultant's confidentiality obligations under these terms and conditions of Contract.

17.4 Nothing in this **Clause** 17 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the Consultant is the Recipient, to the Consultant's immediate or ultimate holding company provided that the Consultant procures that such holding company complies with this Clause 17 as if any reference to the Consultant in this Clause 16 were a reference to such holding company.

17.5 The Consultant authorises the Council to disclose the Confidential Information to such person(s) as may be notified to the Consultant in writing by the Council from time to time to the extent only as is necessary for the purposes of auditing and collating information so as to ascertain a realistic market price for the Services supplied in accordance with the Contract, such exercise being commonly referred to as "**benchmarking**". The Council shall use all reasonable endeavours to ensure that such person(s) keeps the Confidential Information confidential and does not make use of the Confidential Information except for the purpose for which the disclosure is made. The Council shall not without good reason claim that the lowest price available in the market is the realistic market price.

17.6 The Consultant acknowledges that the Council is or may be subject to the FOIA. The Consultant notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 as may be amended, updated or replaced from time to time (the "EIR"). The Consultant will act in accordance with the FOIA, these Codes of Practice and EIR (and any other applicable codes of practice or guidance notified to the Consultant from time to time) to the extent that they apply to the Consultant's performance under the Contract.

17.7 The Consultant agrees that:

17.7.1 without prejudice to the generality of **Clause** 17.2, the provisions of this Clause 17 are subject to the respective obligations and commitments of the Council under the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the EIR;

17.7.2 subject to Clause 17.7.3, the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Council;

17.7.3 where the Council is managing a request as referred to in Clause 17.7.2, the Consultant shall co-operate with the Council making the request and shall respond within five (5) Working Days of any request by it for assistance in determining how to respond to a request for disclosure.

17.8 The Consultant shall and shall procure that its sub-contractors shall:

17.8.1 transfer any request for information, as defined under section 8 of the FOIA or EIR (as appropriate), to the Council as soon as practicable after receipt and in any event within five (5) Working Days of receiving a request for information;

17.8.2 provide the Council with a copy of all information in its possession or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council requesting that Information; and

17.8.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a request for information within the time for compliance set out in FOIA EIR (as appropriate).

17.9 The Council may consult the Consultant in relation to any request for disclosure of the Consultant's Confidential Information in accordance with all applicable guidance.

17.10 This Clause 17 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data. Save as aforesaid and unless otherwise expressly set out in the Contract, this Clause 17 shall remain in force for a period of 3 years after the termination or expiry of this Contract.

17.11 In the event that the Consultant fails to comply with this Clause 17, the Council reserves the right to terminate the Contract by notice in writing with immediate effect.

18. DATA PROTECTION

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

18.2 The Consultant acknowledges that where processing Personal Data on behalf of the Council, for the purposes of the Data Protection Legislation, the Council is the data controller and the Consultant is the data processor. The Consultant shall:

18.2.1 in relation to any Personal Data processed in connection with this agreement:

(i) process that Personal Data only on written instructions of the Council;

(ii) keep the Personal Data confidential;

(iii) comply with the Council's privacy standard, Data protection policy, and data retention guidelines (which shall be provided by the Council if requested);

(iv) comply with the Council's reasonable instructions with respect to processing Personal Data;

(v) not transfer any Personal Data outside of the European Economic Area without the Council's prior written consent;

(vi) assist the Council at the Council's cost in responding to any data subject access request and to ensure compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, privacy impact assessments and consultations with supervisory authorities or regulators;

(vii) notify the Council without undue delay on becoming aware of a Personal Data breach or communication which relates to the Council's or Consultant's compliance with the Data Protection Legislation;

(viii) at the written request of the Council, delete or return Personal Data and any copies thereof to the Council on termination of the contract unless required by the Data Protection Legislation to store the Personal Data;

(ix) maintain complete and accurate records and information to demonstrate compliance with this clause 18 and allow for audits by the Council or the Council's designated auditor.

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

(i) pseudonymising and encrypting Personal Data;

(ii) ensuring confidentiality, integrity, availability and resilience of its systems and services;

(iii) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident;

(iv) regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it

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

19. <u>CONFLICT OF INTEREST</u>

19.1 The Consultant shall not (except as provided below) act for any person who is or is reasonably likely to become a consultant of the Council in relation to the project for which the Services are provided, in any capacity. For the avoidance of doubt this Clause shall not prevent the Consultant from providing services to an existing client of the Consultant

to whom the Consultant is currently providing services provided that, where the Consultant is providing such services to such a person who is an existing client:-

19.1.1 it shall not act for any such client in respect of any transactions between the Council and such client or its subsidiaries; and

19.1.2 it shall ensure that the personnel acting in any capacity for any such client are different from the personnel involved in providing Services under this Contract or in any other work which the Consultant carries out in relation to the Council; and

19.1.3 the Consultant shall ensure that any personnel acting for any such client do not have access to information held by the Consultant relating to the Council.

19.2 This Condition shall survive the expiry or termination of the Consultant's appointment (whether pursuant to Clause 20 or otherwise) for a period of six (6) months and shall continue in full force and effect until expiry thereof.

20. <u>TERMINATION</u>

20.1 Subject to the remaining provisions of this clause 20, this Contract shall terminate on the completion of the provision of the Services or on the expiry of the Contract Period, whichever is the later.

20.1.1 The Council may by giving fourteen (14) Working Days' written notice to terminate this Contract if at any time it decides to postpone or abandon the project in respect of which the Services are to be provided.

20.1.2 The Consultant shall be entitled to terminate this Contract on giving 40 days' written notice where the Council fails to pay an undisputed invoice submitted in accordance with **Schedule 3** and provided the Consultant shall have issued the Council with a notice of its intention to suspend the provision of the Services pending payment of the undisputed invoice amount(s).

20.2 The Council shall be entitled to terminate the Consultant's appointment forthwith by giving [thirty (30) days' /*insert period*][11] written notice to the Consultant if:-

20.2.1 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Consultant; or

20.2.2 the Consultant makes any voluntary arrangements with its creditors or becomes subject to an administration order; or

20.2.3 (being a company) the Consultant goes into liquidation (except for the purposes of an amalgamation, reconstruction or other re-organisation and in such manner as the company resulting therefrom effectively agrees to be bound by or to

[11] Insert the termination notice period; this will depend on the length of this consultancy agreement if the agreement is likely to last one year, then suggest 2 months' notice; if agreement length is under one year consider a reasonable period in terms of number of weeks.

assume the obligations imposed on the Consultant and is capable of fulfilling those obligations); or

20.2.4 (being an individual or firm) the Consultant becomes bankrupt; or

20.2.5 the Consultant ceases or threatens to cease to carry on business; or

20.2.6 the Consultant commits a breach of Clause 23; or

20.2.7 the Consultant is (in the reasonable opinion of the Council) negligent and incompetent in the performance of the Services; or

20.2.8 the Consultant commits any Default or fundamental or persistent breach of any provision of this Contract and in the case of such a breach/Default which, is capable of remedy fails to commence, acting diligently, to attempt to remedy or thereafter fails to remedy the same within fourteen (14) Working Days (or such longer period as the Council may specify) after receipt of a Default Notice giving full particulars of the breach and requiring it to be remedied or the Default is not capable of remedy.

20.3 Without prejudice to **Clause** 16, in the event of termination, rights to all data, calculations, drawings, specifications, documents, materials, software and any other things prepared or developed by the Consultant in connection with the Contract shall pass to the Council and shall be delivered forthwith by the Consultant to the Council.

20.4 The rights to terminate this Contract given by this Clause 20 shall be without prejudice to any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach or other cause of action accrued at the date of termination.

20.5 Without prejudice to Clause 20.4, neither Party shall have a claim against the other by virtue of the early termination of this Contract pursuant to this Clause 20.

20.6 Upon termination of the Contract for any reason the Consultant shall:

20.6.1 immediately deliver to the Council all documents, books, materials, records, correspondence papers and information (on whatever media and wherever located) relating to the affairs of the Council (including but not limited to the Services), any keys, and any other property of the Council which is in its possession or under its control;

20.6.2 irretrievably delete any information relating to the Council stored on any magnetic or optical disk or memory and all matter derived from such sources which is in his possession or under his control outside the premises of the Council; and

20.6.3 provide a signed statement to the Council that he has complied fully with his obligations under this Clause 20.

21. ADVERTISING

21.1 The Consultant shall not without the prior written consent of the Council's Authorised Officer advertise or announce that it is carrying out work for the Council.

22. NON-WAIVER OF RIGHTS

22.1 The failure by the Council to insist upon strict performance of any part of the Contract, or delay in or failure to exercise any rights or remedies herein, or properly to notify the Consultant in the event of breach, or the payment for any services hereunder shall not be deemed to be a waiver of any right of the Council to insist upon strict performance hereof or of any rights or remedies, nor shall any termination of the Contract by the Council operate as a waiver of any of its terms.

23. CORRUPT GIFTS AND PAYMENT OF COMMISSION

23.1 The Council shall be entitled to terminate the Contract forthwith and to recover from the Consultant the amount of any loss resulting from such termination if:-

23.1.1 the Consultant shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to the Contract or any other contract with the Council; or

23.1.2 the like acts shall have been done by any person employed by the Consultant or acting on his behalf (whether with or without the knowledge of the Consultant); or

23.1.3 in relation to any contract with the Council the Consultant or any person employed by him or acting on his behalf shall:-

23.1.4 have committed any offence under the Bribery Act 2010 or

23.1.5 have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972, or

23.1.6 where collusion has taken place between two or more tenderers or parties in fixing or adjusting the bids submitted for the Contract.

24. ILLEGALITY AND SEVERABILITY

24.1 If any provision of this Contract shall become or be declared illegal, invalid or unenforceable, in whole or in part, for any reason whatsoever by any competent tribunal or Council, such provision or part thereof shall be divisible from this Contract and shall be deemed to be deleted from this Contract in so far as the continued operation of this Contract is concerned, provided always that if such deletion substantially affects or alters the commercial basis of this Contract, the Parties shall negotiate in good faith to amend and modify the provisions and terms of this Contract as may be necessary or desirable in the circumstances.

25. NOTICES

25.1 Any notices or other documents to be given under the Contract shall be in and shall be deemed to have been duly given if delivered by hand or by registered post or by facsimile or e-mail to a Party at the address set out as stated within **Schedule 4 (Contract Programme and Management)** such other address as one Party may from time to time designate by written notice to the other.

25.2 In the event of any postal or other strike or industrial action affecting postal communications in the United Kingdom, notices shall be given personally or by facsimile or e-mail.

25.3 Any such notices or other documents shall be deemed to have been received by the addressee two (2) Working Days following the date of despatch if the notice or other document is sent by registered post, or on the next working day after delivery if sent by hand or by facsimile or e-mail.

26. THIRD PARTY RIGHTS

26.1 The parties hereby declare that no term of the Contract is intended by the parties to confer a benefit on any third party (as defined by the Contracts (Rights of Third Parties) Act 1999) nor is intended to be enforceable by any third party. The provisions of the said Act are hereby excluded.

27. DISCRIMINATION

27.1 The Consultant or its agents, employees or sub-contractors shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour ethnic or national origin, disability, gender or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Consultant shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Human Rights Act 1998 (the "Discrimination Acts").

27.2 The Consultant shall notify the Council immediately of any investigation of or proceedings against the Consultant in relation to the Discrimination Acts and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.

27.3 The Consultant shall indemnify the Council against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Council arising out of or in connection with any investigation conducted or any proceedings brought in relation to the Discrimination Acts due directly or indirectly to any act or omission by the Consultant, its agents, employees or sub-contractors.

27.4 The Consultant shall impose on any sub-contractor obligations substantially similar to those imposed on the Consultant by this Clause 27.

28. PERFORMANCE REVIEW

28.1 The Consultant shall provide such interim reviews in respect of the progress of the Services as is stated in the Project Brief and the Consultant's Proposals or as is reasonably requested by the Council's Authorised Officer.

28.2 The interim reviews referred to in **clause** 28.1 may include, but not, exclusively, the provision of written and verbal reports, attendance at review meetings and or the provision of samples of the Services provided at certain stages of the project.

28.3 The provision of such interim reviews shall be at no further cost to the Council.

29. VARIATIONS

Variation of the Services

29.1 The Consultant shall make no material alteration to, addition to or omission from any part of the Services without the knowledge and prior written consent of the Council.

29.2 The Council reserves the right on giving reasonable written notice from time to time to require changes to the Project Brief/Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever. Such a change is hereinafter called "***a Service Variation***".

29.3 Any Service Variation shall be communicated in writing by the Council's Authorised Officer to the Consultant's Contract Manager in accordance with the clause 25 (Notices).

29.4 All Service Variations shall be in the form of an addendum to the Contract executed by duly authorised representatives of both Parties.

29.5 In the event of a Service Variation the Contract Fee may also be varied. The variation in the Contract Fee ("***Price Variation***") shall be calculated by the Council and agreed in writing with the Consultant and shall be such amount as properly and fairly reflects the nature and extent of the Service Variation in all the circumstances.

29.5.1 The Consultant shall provide such information as may be reasonably required to enable such varied price to be calculated.

29.5.2 Failing agreement, the matter shall be determined by in accordance with the applicable dispute resolution procedure hereunder.

29.5.3 The Council shall have the option of withdrawing the Service Variation prior to a final decision of the Price Variation being made under any of the dispute

resolution procedures.

General Amendment

29.6 Any other amendment, variation or deletion to this Contract but excluding a Service Variation for which specific amendment provisions apply (as detailed above in this clause 29), shall be effective if mutually agreed by the Parties and made by written agreement executed by duly authorised representatives of both Parties and annexed to this Contract.

30. SUB-CONSULTANT COLLATERAL WARRANTIES

30.1 Where the Consultant proposes to use Sub-Consultants in the delivery of the Services, in accordance with clause 14 (Assignment, Sub-Contracting and Novation) the Council may require the provision of a collateral warranty in such form as the Council may determine.

30.2 If requested by the Council, the Sub-Consultant shall promptly enter into a collateral warranty in favour of the Council.

30.3 The Council will not enter into any other direct agreement with a Sub-Consultant.

31. SECURITY FOR DUE PERFORMANCE

31.1 Should the Council request, the Consultant shall provide, at its expense, on signature of the Contract a parent company guarantee (from the Consultant's ultimate parent company) and/or a performance bond in such form as the Council may specify. The Council will not be obliged to make any payments under the Contract until the requested parent company guarantee and/or performance bond has been provided in a form satisfactory to the Council.

32. FORCE MAJEURE

32.1 Notwithstanding any other provision of these conditions neither Party shall be liable for any failure or delay in the performance of this Contract caused by means beyond their reasonable control including without limitation, strikes (except by the Consultants staff), lock outs, labour disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction or any overriding emergency procedures, fire, flood and storm ("Force Majeure").

32.2 If the Consultant is unable to perform the Services and obligations under this Contract as a direct result of a Force Majeure event, that party shall give to the other written notice of the inability stating the reason in question within two (2) days of the inability arising. The operation of this Contract shall be suspended during the period (and only during the period) in which the reason continues save in respect of confidentiality.

32.3 Forthwith upon the reason ceasing to exist the party relying on it shall give written notice

to the other of this fact whereupon this Contract shall continue in operation. If the reason continues for a period of twenty (20) days, the party not claiming relief under this clause 30) may terminate this Contract forthwith upon giving reasonable written notice of such termination to the other party.

33. CONSULTANT'S LIABILITY AND INDEMNITIES

33.1 Subject to the further provisions of this clause that follow, the Consultant shall be liable for and shall fully indemnify the Council against all liabilities, damages, costs, claims, losses, expenses, duties, taxes, statutory deductions, demands and proceedings arising directly arising out of or in connection with:

33.1.1 the Consultant's failure to provide all or any part of the Services in accordance with the Contract or at all;

33.1.2 any Default committed by the Consultant or any of its Staff (including its Sub-Contractors) or agents;

33.1.3 any negligent, other tortious or fraudulent act or omission of, or breach of statutory duty by the Consultant;

33.1.4 the death of or personal injury to any person arising out of the negligent act or omission of the Consultant;

33.1.5 any damage to the Councill's tangible property arising directly from the Consultant's breach of this Contract; or

33.1.6 any third party liabilities arising directly from the Consultant's breach of this Contract.

33.2 For the purposes of clause 33.1 above "third party liabilities" shall mean any demands made by third parties against the Council and all liabilities of the Council to third parties.

33.3 The Consultant shall not be liable for any loss, damage, liability, costs, claims or expenses which may result or arise solely from the following:

33.3.1 any error, fault, or defect in any data or information provided by the Council or procured to be provided by the Council;

33.3.2 any instruction, advice, direction or recommendation made or procured to be made by the Council to the Consultant;

33.3.3 any failure of the Council to observe any material and relevant advice or direction communicated to the Council in writing by the Consultant; or

33.3.4 any act, omission, default, or negligence of the Council, its employees, contractors (other than the Consultant's) or agents.

33.4 For the avoidance of doubt, it is agreed that the Consultant shall not be liable for indirect and consequential claims and losses (i.e. liability for any loss of profits, loss of income, loss of business, loss of data, loss of revenue, loss of goodwill, loss of anticipated savings, or losses calculated by reference to profits, income, business, data, revenue, goodwill, anticipated savings or any special, indirect or consequential loss or damage of any kind whatsoever and howsoever caused arising out of or in connection with the Contract) SAVE THAT where the Consultant holds insurance that covers the Consultant's exposure for any such claims and losses, the Consultant shall be liable to the Council and shall account to the Council for any such indirect and consequential claims and losses to the extent that the Consultant recovers any such sums from its insurers.

33.5 Without prejudice to the generality of clause 33.1 the Consultant's liability to the Council in respect of loss or damage to any property of any nature whatsoever shall include an obligation to reimburse the Council for all costs and expenses reasonably incurred by the Council in the re-instatement or replacement of any such property, whether or not such re-instatement or replacement results in an improvement of or to the property so lost or damaged.

33.6 The Consultant's liability to the Council pursuant to clause 33.1 shall be, for the avoidance of doubt, without prejudice to any other right or remedy available to the Council whether under the common law principles of contract and tort, under statute or as expressly provided in this Contract and in particular (but without limitation) shall not prejudice in any way the Council's right to enforce at any time and in any manner whatsoever any bond, guarantee or collateral warranty.

33.7 The Consultant's liability for professional negligence shall be limited to the insurance requirement in clause 12.4.

34. <u>ENTIRE AGREEMENT</u>

34.1 Subject to Clause 33.4 and without prejudice to the Consultant's obligations under the Contract, the Consultant will be responsible for and will make no claim against the Council in respect of any misunderstanding affecting the basis of the Consultant's Proposals in respect of the Contract or any incorrect or incomplete information howsoever obtained.

34.2 The Contract constitutes the whole and only contract between the Parties relating to the subject matter of the Contract and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, relating thereto.

34.3 Without prejudice to **clause 2.1** each Party acknowledges that in entering into the Contract it is not relying upon any representation, warranty, promise or assurance made or given by any other Party or any other person, whether or not in writing, at any time prior to the execution of the Contract which is not expressly set out herein.

34.4 Nothing in Clauses 33.2 and 33.3 or otherwise in the Contract will exclude any liability for fraudulent misrepresentation.

35. DISPUTE RESOLUTION

35.1 During any dispute, including a dispute as to the validity of the Contract, it is mutually agreed that the Consultant shall continue its performance of the provisions of the Contract (unless the Council requests in writing that the Consultant does not do so).

35.2 If a dispute arises between the Council and the Consultant in relation to any matter which cannot be resolved by the Council's Authorised Officer and the Consultant either of them may refer such dispute to the Dispute Resolution Procedure in accordance with **clause** 34.3.

35.3 In the first instance each of the Council and the Consultant shall arrange for a more senior representative than those referred to in Clause 34.2 to meet solely in order to resolve the matter in dispute. Such meeting(s) shall take place within fourteen (14) days of the date of the Commencement of the relevant dispute. The meeting shall be minute and shall be chaired by the Council. Such meeting(s) shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question at the discretion of the chairman.

35.4 If the meeting(s) referred to in Clause 34.3 does not resolve the matter in question then the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. To initiate mediation the Parties may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator. The mediation shall commence within 28 days of the Mediation Notice being served. Neither Party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one hour. Thereafter paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Parties). Neither Party to the mediation will commence legal proceedings against the other until thirty (30) days after such mediation of the dispute in question has failed to resolve the dispute. The Parties will co-operate with any person appointed as mediator providing him with such information and other assistance as the mediator shall require and will pay the costs, as the mediator shall determine or in the absence of such determination such costs will be shared equally.

[Guidance: In the case of a construction related consultancy (e.g. the appointment of an architect, designer, engineer, etc.), the Housing Grants, Construction and Regeneration Act 1996 will apply. The following clause 34.4.1 is suggested in addition to the previous in order to comply with the provisions of the mentioned Act.]

35.4.1 Notwithstanding **clause** 34.4 and in the event that the provisions of the Housing Grants Construction and Regeneration Act 1996 will apply to any element of the Services (in which case the Parties shall have the right to go to adjudication at any time) then the relevant Adjudication Rules which will apply will be those set out in the Scheme of Construction Contracts ("the Scheme") issued in accordance with the Scheme for Construction Contracts (England and Wales) Regulations 1998, subject to the following alterations/clarifications:

a. In the event of failure by the Parties to agree upon the choice of Adjudicator then

the Adjudicator will be nominated upon the application of either party by the Chief Executive (or if she is unable to act by any of his nominated representatives) for the time being of the CEDR;

b. the Applicant party will be subject to any contrary decision by the Adjudicator and shall bear the costs of the adjudication;

c. the Adjudicator will give his decision and reasons in writing and may award costs as part of the decision and will have power to seek expert or further professional advice if necessary;

d. the Adjudicator's decision should be binding on both Parties but not final until it is replaced either by an agreement between the Parties or a decision of the English Courts.

35.5 Neither party shall be precluded by clause 34.4 from taking such steps in relation to court proceedings as either party may deem necessary or desirable to protect its respective positions. This shall include:

35.5.1 Issuing or otherwise pursuing proceedings to prevent limitation periods from expiring; and/or Applying for interim relief.

35.6 The use of the dispute resolution procedures set out in this **clause** 34 (dispute resolution) shall not delay or take precedence over the provisions for termination set out in **clauses** 20 (termination).

36. <u>QUALITY ASSURANCE AND BEST VALUE</u>

36.1 The Consultant shall maintain an effective and economical programme for quality, planned and developed in conjunction with any other functions of the Consultant necessary to satisfy the Contract requirements. The Consultant acknowledges that the Council is a best value Council for the purposes of the Local Government Act 1999 and as such the Council is required to make arrangements to secure continuous improvement in the way they exercise their functions, having regard to a combination of economy, efficiency and effectiveness. The Consultant shall assist the Council to discharge this duty where possible and agrees to negotiate in good faith (acting reasonably) any changes to this Contract in order for the Council to achieve best value.

37. <u>GOVERNING LAW</u>

37.1 The construction, performance and validity of the Contract shall be governed by English Law. The Parties submit to the exclusive jurisdiction of the Courts of England and Wales provided that the Council has the right in its absolute discretion to enforce a judgement and/or to take proceedings in any other jurisdiction in which the Consultant is incorporated or in which any assets of the Consultant may be situated.

SCHEDULE 2 - THE SERVICES

[INSERT COUNCIL'S PROJECT BRIEF AND THE CONSULTANT'S PROPOSALS]

SCHEDULE 3 - PRICING SCHEDULE

SCHEDULE 3A – CONTRACT FEE

[INSERT CHARGES/ TOTAL FEES PAYABLE TO THE CONSULTANT
INCLUDE HERE WHETHER THEIR FEE INCLUDES EXPENSES OR WHETHER THE CONSULTANT SHALL BE ENTITLED TO CHARGE A CAPPED SUM/LUMP SUM etc.

IN ADDITION, SET OUT THE STAGE PAYMENTS AND/OR ANY DATES OR WHETHER PAYMENT IS ON ACHIEVEMENT OF MILESTONES.]

Rates and Fees

£	per hour?
£	per day?
£	Fixed fee?

SCHEDULE 3B - PAYMENT TERMS

1.1 Invoices in respect of each Accounting Period expressed in the lawful currency of the United Kingdom, are to be submitted within 5 Working Days of the end of the each Accounting Period (i.e. submitted 4 weeks in arrears) from the Commencement Date addressed to:-

[INSERT COUNCIL'S CLIENT OFFICER CONTACT DETAILS FOR RECEIPT OF INVOICES]

1.2 Invoices must not have copies attached and shall indicate or contain the following:

(a) the project title;

(b) the Council's Purchase Order number;

(c) scale fees, time charge fees and expenses shall be shown separately;

(d) expense submissions shall be itemised under headings such as - printing, travel, meals, other items;

(e) invoices for time charge work shall be accompanied by supporting details, including timesheets signed by the Council's Authorised Officer;

(f) VAT shall be shown separately;

(g) only valid VAT invoices shall be processed for payment. Any invoice which does not meet VAT criteria shall be rejected.

1.3 Payment shall be made by the Council to the Consultant, in the lawful currency of the United Kingdom, within **thirty (30) days** from receipt of correct invoice(s).

1.4 Any queries regarding invoicing and progress of payments should be directed to the Authorised Officer or his/her nominee. Invoices attached to letters shall have London Borough of Brent and the address in full as above typed on the invoice.

1.5 A copy of all invoices supported by a record of the personnel employed and time spent and work performed for the period covered by the invoice shall be submitted to the Council's Authorised Officer within five (5) Working Days of the end of the relevant Accounting Period. All time-sheets shall be subject to the approval of and to signature by the Council's Authorised Officer to ensure that the Authorised Officer is satisfied that the Services covered by the relevant invoice have been performed.

SCHEDULE 4A - CONTRACT PROGRAMME

[INSERT CONTRACT/PROJECT PROGRAMME/TIMETABLE etc.]

SCHEDULE 4B - CONTRACT MANAGEMENT

The Council's personnel referred to in Schedule 1 are:-

Council Authorised Officer:

Contact name:
Address:

Tel:
Fax:
e-mail:

Consultant's Contract Manager:

Contact name:
Address:

Tel:
Fax:
e-mail:

The addresses for notices referred to in Clause 25 are:

Notices to the Council

Contact name:
Address:

Tel:
e-mail:
Fax:

Notices to the Consultant

Contact name:
Address:

Tel:
e-mail:
Fax: