

DATE

(1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF MERTON

And

[INSERT NAME] (2)

NAME OF COMPANY

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THIS AGREEMENT is made the

BETWEEN

(1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF MERTON of
Civic Centre, London Road, SM4 5DX ('the Council')

and

(2) whose registered address is: company number: ("the Contractor")

WHEREAS

- (a) The Council issued a Request for Quotations (RFQ) seeking the consultancy services of a company to undertake delivery as defined in schedule xyz [from the procurement]
- (b) The Contractor submitted a quote which the Council has accepted. A description of the Project and Services to be undertaken during this Agreement can be found in Schedule 1.
- (c) The Contractor is willing to perform the Services in accordance with the provisions of this Agreement, the RFQ and its quote in an open and transparent manner.

NOW IT IS AGREED between the Council and the Contractor as follows:

1. This Agreement constitutes the entire agreement between the Council and the Contractor for the performance by the Contractor of the Service.

2. The Contractor shall provide the Services fully in accordance with the provisions of the Agreement to the standards required during the Contract Period.
3. So long as the Contractor provides the Services to the required standard the Council shall make to the Contractor the payment provided by the Agreement on the terms contained therein in consideration of the Contract Price.

1. INTERPRETATION

In these Conditions, the following definitions apply:

- a. **Agreement:** this agreement and the Request for Quote, the Project Information the completed Bidder Information and Method Statements, the Completed Form of Quote, the Notification of Acceptance (including any agreed communications specifically referred to therein), and the Official Purchase Order;
- b. **Authorised Officer:** such representative appointed by the Council to act in the name of the Council for the purposes of the Contract;
- c. **Background IPR:** includes any IPR controlled or owned by any Party prior to the date of commencement of this Agreement or IPR generated by any of the Parties independently of the Project and controlled or owned by that Party or any IPR to which the Party has the necessary rights for the purpose of the Project;
- d. **Business Day:** a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;
- e. **Commencement Date:** has the meaning set out in the schedule of services and agreed timetable contained therein;
- f. **Conditions:** these terms and conditions as amended from time to time in accordance with clause 17.9;

- g. **Contract:** the contract between the Council and the Contractor for the supply of Services in accordance with these Conditions;
- h. **Council:** The London Borough of Merton;
- i. **Contract Period:** the period commencing on the Commencement Date and expiring on the Expiry Date;
- j. **Contract Price:** as set out in Schedule 2;
- k. **Cultural Advisory Group:** that group of partners established in the context of the London Borough of Culture Scheme to steer cultural development in the borough, the membership of which will change from time to time but always including the Council;
- l. **Data Controller:** shall have the same meaning as set out in the Data Protection Legislation;
- m. **Data Processor:** shall have the same meaning as set out in the Data Protection Legislation;
- n. **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;
- o. **Data Subject:** shall have the same meaning as set out in the Data Protection Legislation;
- p. **Deliverables:** means all documents, products and materials developed by the Contractor or its agents, the Contractor and its employees as part of or in relation to the Services and Project in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);
- q. **Expiry Date:** means any date as informed by the Council in writing;
- r. **GDPR:** the General Data Protection Regulation ((EU) 2016/679).

- s. **IPR:** Includes any intellectual property rights of any description including but not limited to patents, copyrights, design rights (registered or unregistered), trademarks, know-how and database rights;
- t. **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.
- u. **Personal Data:** shall have the same meaning as set out in the Data Protection Legislation;
- v. **Project:** means the description of Services in Schedule 1;
- w. **Services:** the services, including without limitation any Deliverables, to be provided by the Contractor under the Contract as set out in Schedule 1;
- x. **Service Specification:** the description or specification for Services in Schedule 1 and as agreed in writing by the Council and the Contractor;
- y. In these Conditions, the following rules apply:
 - i. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - ii. a reference to a party includes its [personal representatives,] successors or permitted assigns;
 - iii. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
 - iv. any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 - v. a reference to **writing** or **written** includes faxes and e-mails.

2. SCOPE OF SERVICES

- 2.1 The Council requires the Contractor to carry out the Services.
- 2.2 The Project shall be carried out as set out in Schedules 1 for the duration stated therein unless extended in line with clause 2.3 below.
- 2.3 During the Contract Period and entirely at its own discretion the Council may extend the Expiry Date for a further period. This will be notified to the Contractor in writing.
- 2.4 The Council will nominate an Authorised Officer to inspect the Deliverables to ensure that the Project, Services, Schedule 1 and any other documentation the Council is relying upon has been complied with.
- 2.5 Schedule 1 will detail the Deliverables due under the Agreement and timelines the Contractor must follow.
- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Contractor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7 All of these Conditions shall apply to the supply of Services.
- 2.8 In the event of any inconsistency or conflicts these Conditions shall prevail.

3. COUNCIL'S OBLIGATIONS

- 3.1 During the Contract Period the Council shall:
 - i. pay to the Contractor all sums of money payable pursuant to the provisions of the Contract subject to the Contractor complying with its obligations hereunder;

- ii. provide such information as the Contractor may reasonably request for the provision of the Services and the Council considers reasonably necessary for the purpose of providing the Services; and
- iii. comply with the terms of this Contract.

4. THE CONTRACTOR'S OBLIGATIONS

4.1 The Contractor shall meet any performance dates and requirements for the Services specified in Schedule 1 and/or notified to the Contractor by the Council.

4.2 In providing the Services, the Contractor shall:

- i. co-operate with the Council in all matters relating to the Services, and comply with all instructions of the Council;
- ii. perform the Services with the best care, skill and diligence in accordance with best practice in the Contractor's industry, profession or trade;
- iii. ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification and any other document referenced in this agreement, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Contractor by the Council;
- iv. submit reports as provided in the Schedules by the due dates in which respect time shall be of the essence of the contract in all cases;
- v. obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations; and
- vi. not do or omit to do anything which may cause the Council to lose any licence, consent or permission upon which it relies for the purposes of conducting its business, and the Contractor acknowledges that the Council may rely or act on the Services; and
- vii. not to do or omit to do anything which may cause the Council reputational damage; and

- viii. if a company, notify the Council in the event of a change in control of the Contractor, (or where the Contractor is a subsidiary company) its ultimate holding company and/or a reduction in the capital of that company; and
- ix. should the Contractor be a self-employed, or act as a sole trader as a limited company, the Contractor must provide a statement dating from within the most recent financial year from HMRC to the effect that HMRC consider the Contractor to be self-employed upon request.

5. COUNCIL REMEDIES

5.1 If the Contractor fails to perform the Services by the applicable date or agreed extension period the Council may, without limiting its other rights or remedies, have one or more of the following rights:

- i. to terminate the Contract with immediate effect by giving written notice to the Contractor;
- ii. to refuse to accept any subsequent performance of the Services which the Contractor attempts to make;
- iii. to recover from the Contractor any costs incurred by the Council in obtaining services from a third party.

5.2 These Conditions shall extend to any substituted or remedial services supplied by the Contractor.

5.3 The Council's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

6. CHARGES AND PAYMENT

6.1 Subject to clause 6.2 hereunder, the Contract Price shall be the full and exclusive fixed price proposed by the Contractor in respect of the performance of the Services. Unless otherwise agreed in writing by the Council, the charges shall include every cost and expense of the Contractor directly incurred in connection with the performance of the Services as specified in Schedule 2.

6.2 The Contract Price will be paid in accordance with the following timetable:

Payment milestone	Percentage of fixed fee
Signature of contract (October 2019)	10%
Submission of report on spaces (February 2020)	20%
Submission of report on sustainable networking (April 2020)	20%
Final report post this stage of project and completion of networking events (July 2020)	50%

6.3 In consideration of the supply of Services by the Contractor, the Council shall pay the invoiced amounts within 30 days of the date of a valid, undisputed and correctly rendered invoice to a bank account nominated in writing by the Contractor.

- 6.4 All amounts payable by the Council under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Contractor to the Council, the Council shall, on receipt of a valid VAT invoice from the Contractor, pay to the Contractor such additional amounts in respect of VAT as are chargeable on the supply of Services.
- 6.5 If the Council fails to pay any undisputed amount properly due and payable by it under the Contract, the Contractor shall have the right to charge interest on the overdue amount at the rate of 2 per cent per annum above the base rate for the time being of Bank of England accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that the Council disputes in good faith.
- 6.6 The Contractor shall maintain complete and accurate records of the time spent by the Contractor in providing the Services, and the Contractor shall allow the Council to inspect such records at all reasonable times on request. Complete and accurate records of time spent may be required by the Council to verify the time spent by the Contractor in providing the Service.
- 6.7 The Council may, without limiting its other rights or remedies, set off any amount owing to it by the Contractor against any amount payable by the Council to the Contractor under the Contract.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Council shall retain its ownership of all Intellectual Property Rights in its Background Information provided to the Contractor, subsisting prior to the Commencement Date.
- 7.2 The Contractor undertakes to use best endeavours to ensure that its work on the Project is carried out in accordance with accepted standards.

- 7.3 The Contractor shall indemnify and hold harmless the Council of any IPR infringement if the Background Information supplied by the Contractor or any IPR created results in the infringement of the proprietary rights of any third parties.
- 7.4 The Contractor shall grant an irrevocable license to the Council and its partners in the Cultural Advisory Group for the IPR it has contributed to the creation of the Project, (subject always to the rights of any third party).
- 7.5 The Council shall own the IPR in the Deliverables produced by the Contractor.

8. WARRANTIES, INDEMNITY, LIABILITY AND INSURANCE

- 8.1 The Contractor shall be liable for and shall indemnify and keep the Council indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Council as a result of or in connection with:
- i. any claim made against the Council by a third party for death, personal injury or damage to property arising out of, or in connection with the Service, to the extent that the defect in the Service is attributable to the acts or omissions of the Contractor, its employees, agents or sub-contractors;
 - ii. any claim made against the Council by a third party arising out of, or in connection with, the supply of Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Contractor, its employees, agents or sub-contractors; and
 - iii. any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with the use or supply of the Services; and
 - iv. any claim in respect of any damage to property arising out of or in the course of or caused by the carrying out of the Service.

- 8.2 For the duration of the Contract, the Contractor shall maintain in force, with a reputable insurance Company (as approved by the Council), as a minimum, professional indemnity insurance for the amount of £1m for any one incident and shall, on the Council's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of the insurance.
- 8.3 The Contractor shall notify the Authorised Officer immediately (and in any event within 24 hours) of any claim, demand or proceeding and shall supply such particulars or details thereof as the Authorised Officer shall reasonably require.
- 8.4 The Authorised Officer shall be entitled to notify the Contractor in writing that in the opinion of the Authorised Officer any such policy of insurance does not effect sufficient cover to comply with this condition and to require the Contractor to effect such insurances as will so comply. Upon receipt of such notice, the Contractor shall forthwith procure and effect such insurance as the Authorised Officer shall require and in default the Authorised Officer may either effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Council plus 20% of the total cost of the work to cover administration costs incurred by the Council from monies due or which may become due to the Contractor or recover the same as a debt from the Contractor.
- 8.5 The Contractor warrants and represents to and undertakes with the Council that:
- i. it has full power and authority to enter into the Contract;
 - ii. it is of sound financial standing and has sufficient working capital available to carry out the Service for the Contract Period;
 - iii. the latest set of audited accounts and balance sheet available at the date hereof show a true and fair view of the Contractor's financial position and the Contractor's financial position has not materially worsened since the date of the accounts.
- 8.6 Nothing in this Contract will exclude or limit the liability of either party for:
- a) death or personal injury caused by its negligence; or

b) fraud or fraudulent misrepresentation.

- 8.7 Subject to clause 8.6, the Contractor's aggregate liability in connection with this Contract (whether expressed as an indemnity or otherwise) during the term (whether in contract, tort (including negligence), breach of statutory duty or howsoever arising) shall be limited to a sum equivalent to one hundred and twenty five per cent (125%) of the Contract Price paid and payable in the 6 (six) months prior to event that gave rise to the claim.
- 8.8 Subject to clause 8.6, the Council's aggregate liability in connection with this Contract (whether expressed as an indemnity or otherwise) during the term (whether in contract, tort (including negligence), breach of statutory duty or howsoever arising) shall be limited to a sum equivalent to one hundred per cent (100%) of the Contract Price paid and payable in the 6 (six) months prior to event that gave rise to the claim.

9. TERMINATION

9.1 Without limiting its other rights or remedies, the Council may terminate the Contract with immediate effect by giving written notice to the Contractor if:

- i. the Contractor commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing of the breach;
- ii. the Contractor 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) 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;
- iii. the Contractor 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 (where a Company) for the sole purpose of a scheme for a solvent amalgamation of

- the Contractor with one or more other companies or the solvent reconstruction of the Contractor];
- iv. 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 Contractor (being a Company) other than for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
 - v. the Contractor (being an individual) is the subject of a bankruptcy petition order;
 - vi. a creditor or encumbrancer of the Contractor 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 its assets and such attachment or process is not discharged within [14] days;
 - vii. 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 Contractor (being a Company);
 - viii. a floating charge holder over the assets of the Contractor (being a Company) has become entitled to appoint or has appointed an administrative receiver;
 - ix. a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;
 - x. any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.ii to clause 9.ix (inclusive);
 - xi. the Contractor suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
 - xii. the Contractor (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

9.2 Without limiting its other rights or remedies, the Council may at any time terminate the Contract in respect of the supply of Services, by giving the Contractor 1 weeks written notice.

10. CONSEQUENCES OF TERMINATION

10.1 On termination of the Contract or any part of it for any reason:

- i. where the Services are terminated, the Contractor shall immediately cease to perform the Service and deliver to the Council all Deliverables, whether or not then complete. Until they have been returned or delivered, the Contractor shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- ii. the Contractor shall fully and promptly indemnify the Council in respect of the cost of causing to be performed the Service as would have been performed by the Contractor during the remainder of the Contract Period or the period of twelve (12) months commencing on the date of termination whichever period is shorter ("the Period") to the extent that such cost exceeds such sums as would have been lawfully payable to the Contractor for performing the Service. The Council shall be at liberty to have the Service performed by any persons (whether or not servants of the Council) as the Council shall in its entire discretion think fit and shall be under no obligation to employ the least expensive method;
- iii. the Council shall be under no obligation to make any further payment to the Contractor and shall be entitled to retain any payment which may have fallen due to the Contractor before termination until the Contractor has paid in full to the Council all sums due under the Contract or to deduct therefrom any sum due to the Contractor under the Contract.
- iv. the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- v. clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11. CONFIDENTIALITY

11.1 The provisions of this Condition 11 shall not apply to:

- i. any information in the public domain otherwise than by breach of this Contract;
- ii. information in the possession of the receiving party before it was obtained in accordance with the Contract except where such information was disclosed to it in confidence or where the receiving party knew or ought reasonably to have known that it had been disclosed to it in breach of a duty of confidence;
- iii. information obtained from a third party who is free to divulge the same.

11.2 The Contractor shall not without the written consent of the Council during the Contract Period or any time thereafter make use of for its own purposes, or disclose to any person (except as may be required by law) the QQ documents, Contract, Schedules or any information contained therein or arising out of or in any material provided to the Contractor by the Council or material arising or Deliverables prepared by the Contractor pursuant to the Contract, all of which information shall be deemed to be confidential.

11.3 Neither the Contractor nor its personnel shall divulge or dispose of or part with possession, custody, or control of any confidential material or information provided to the Contractor by the Council pursuant to the Contract or prepared or obtained by the Contractor pursuant to the Contract, other than in accordance with the express written instruction of the Authorised Officer. the Contractor shall ensure that its employees are aware of and comply with the provisions of this Condition.

11.4 The Contractor shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, losses, charges and expenses whatsoever reasonably incurred by the Council in respect of any breach by the Contractor of this Condition 11.

11.5 Neither the Council nor its personnel shall divulge or dispose of or part with possession, custody, or control of any confidential material or information

provided to the Council by the Contractor pursuant to the Contract except with the express written consent of the Contractor's representative.

11.6 The Contractor shall seek the prior written consent of the Council to the press release, announcement or publication of any document or statement relating to the Service being the subject of the Contract and except with the consent in writing of the Council which shall not be unreasonably withheld the Contractor shall not make any press announcement or publicise the Contract in any way.

11.7 For the duration of this Contract and for a period of 24 months after the Contract award the Council may stop the Contractor from:-

- i. itself or in conjunction with others, submitting any bid for the management or operation of services which are the subject of this contract.

11.8 The Contractor shall return to the Council at the end of the contract period all papers, documents and electronically stored data which are the property of the Council unless the Council agrees the Contractor retain specific items.

12. DATA PROTECTION

12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

12.2 Notwithstanding the general obligation in clause 12.1, where the Contractor is processing Personal Data as a Data Processor for the Council as Data Controller, the Contractor 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 Contractor shall:

- (a) process the Personal Data only in accordance with the documented instructions from the Council which may be specific instructions or instructions of a general nature as set out in Schedule 3 to this Agreement or as otherwise notified by the Council to the Contractor (in writing) from time to time and for no other purpose;

- (b) 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;
- (c) obtain prior written consent from the Council 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 12;
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Contractor has provided appropriate safeguards in relation to the transfer in accordance with Data Protection Legislation as determined by the Council;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor 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 Council in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (e) take reasonable steps to ensure the reliability of any of the Contractor's Personnel who have access to the Personal Data;
- (f) ensure that the Contractor's Personnel without appropriate authority do not have access to the Personal Data;
- (g) ensure that all the Contractor'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 12;
- (h) ensure that all the Contractor's Personnel receive an adequate level of training in data protection;
- (i) ensure that the Contractor'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 Council;
- (j) notify the Council within twenty-four hours if it becomes aware of a breach or alleged breach of the Data Protection Legislation;

- (k) provide the Council with full co-operation and assistance in relation to investigating breaches to include inspection of premises and security arrangements if requested.
 - (l) notify the Council (within two (2) Business Days), if it receives a Data Subject Access Request under the Data Protection Legislation or a complaint relating to the Council's obligations and promptly notify the Council of any breach of the security measures required to be put in place pursuant to this clause 12;
 - (m) provide the Council with full co-operation and assistance in relation to any complaint or request made under the Data Protection Legislation including by:
 - (i) providing the Council with full details of the complaint or request;
 - (ii) providing the Council with any information requested by the Council within the timescales required by the Council.
- 12.3 The Contractor shall, upon reasonable notice, allow officers of the Council to have reasonable rights of access at all times to the Contractor's premises, Contractor's Personnel and records for the purposes of monitoring the Contractor's compliance with the Data Protection Legislation including its security requirements.
- 12.4 The Contractor shall at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of this Agreement unless the Contractor is required by Law to retain the Personal Data.
- 12.5 The provisions of this clause 12 shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

13. FREEDOM OF INFORMATION

- 13.1 The Contractor shall comply in all respects with the provisions of the Freedom of Information Act 2000 as if it were a public body, and shall indemnify the Council against all actions, costs, expenses, claims, proceedings and demands which may be made or brought against the Council for breach of statutory duty under the said Act which arises as result of a breach of statutory duty by the Contractor, the Contractor's personnel, servants and agents.
- 13.2 If the Council receives a request for the disclosure of information under the Freedom of Information Act 2000 and the information is in the possession (or

is likely to come into the possession) of the Contractor then the Contractor shall make available the information to the Council within a reasonable period to be specified by a notice in writing. Failure to do so may constitute a breach of contract and the Council reserves its rights should this occur.

13.3 The Contractor acknowledges that the Council may have to disclose any information submitted by the Contractor in relation to this Contract that is subject to requests under the Freedom of Information Act 2000.

14. PREVENTION OF BRIBERY

14.1 The Contractor:

- i. shall not, and shall procure that any of the Contractor Party and all the Contractor Personnel shall not, in connection with this Agreement commit a Prohibited Act;
- ii. warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.

14.2 The Contractor shall:

- i. if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- ii. within 12 Working Days of the Commencement Date, certify to the Council in writing (such certification to be signed by an officer of the Contractor) compliance with this clause 14 by the Contractor and all persons associated

with it or other persons who are supplying goods or services in connection with this Agreement. The Contractor shall provide such supporting evidence of compliance as the Council may reasonably request.

14.3 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any the Contractor Party or the Contractor Personnel from committing a Prohibited Act and shall enforce it where appropriate.

14.4 If any breach of clause 14.1 is suspected or known, the Contractor must notify the Council immediately.

14.5 If the Contractor notifies the Council that it suspects or knows that there may be a breach of clause 14.1, the Contractor must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.

14.6 The Council may terminate this Agreement by written notice with immediate effect if the Contractor, the Contractor Party or the Contractor Personnel (in all cases whether or not acting with the Contractor's knowledge) breaches clause 14.1. [In determining whether to exercise the right of termination under this clause 14.5, the Council shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, Sub-the Contractor or supplier not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Sub-the Contractor) means and shall be construed as acting:

- i. with the Council; or,
- ii. with the actual knowledge;
- iii. of any one or more of the directors of the Contractor or the Sub- Contractor (as the case may be); or

iv. in circumstances where any one or more of the directors of the Contractor ought reasonably to have had knowledge.

14.7 Any notice of termination under clause 14.6 must specify:

- i. the nature of the Prohibited Act;
- ii. the identity of the party whom the Council believes has committed the Prohibited Act; and
- iii. the date on which this Agreement will terminate.

14.8 Despite condition 15 (Disputes), any dispute relating to:

- i. the interpretation of clause 14; or
- ii. the amount or value of any gift, consideration or commission,
- iii. shall be determined by the Council and its decision shall be final and conclusive.

14.9 Any termination under clause 14.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

15. EQUALITY AND DIVERSITY

15.1 The Contractor's equalities policy shall be notified to all members of the Contractor's staff involved in the delivery of the Service under this Contract.

15.2 The Contractor may be required to provide to the Council copies of such instructions, documents, advertisements and other literature and details of monitoring applicants and employees for the purpose of assessing the Contractor's compliance with this Condition 15.

- 15.3 The Contractor warrants that its policy complies with the statutory obligations set down in the all current equalities legislation including but not limited to the Equalities Act 2010 and that it shall not treat one group of people less favourably than others because of any protected characteristic in relation to the provision of the Service or to decisions to recruit, train, promote, discipline or dismiss staff, and such policy must also specify that the Contractor will not tolerate behaviour, which is inconsistent with it and the detailed measures it will take if this occurs. The Contractor shall also take all reasonable steps to ensure that all staff, suppliers and sub-contractors meet their obligations under the Equality Act.
- 15.4 The Contractor shall observe as far as possible the Equality & Human Rights Commission's Code of Practice on Employment and non statutory guidance which gives practical guidance to employers and others on equalities issues. The Contractor shall provide such information as the Council may reasonably require to enable it to assess the Contractors compliance with the said Code of Practice and guidance.
- 15.5 The Contractor shall support the Council in observing the requirements of all equalities legislation and policy relating to equalities and the Public Sector Equality Duty and the requirement for public bodies to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity, and foster good relations across all aspects of equality protected by the Equality Act. The Contractor shall also comply with all other rules and codes of practice of relevant professional bodies.
- 15.6 If any court or tribunal, or the Commission for Equality and Human Rights, should make any finding of unlawful discrimination against the Contractor, then the Contractor shall immediately notify the Contract Manager and take all necessary steps to prevent recurrence of such unlawful discrimination. The Council may require the Contractor to provide full details of the steps taken to prevent such recurrence.

15.7 In the performance of the Service and in its dealings with service users, Council employees and members of the general public, the Contractor shall comply and shall ensure that its Representatives comply with the Human Rights Act 1998 as if the Contractor were a public body, and all Laws relating to equal opportunities.

15.8 The Contractor shall indemnify and keep the Council so indemnified against all direct and indirect claims, costs, losses and expenses arising out of a breach of any of the provisions of this Condition 15.

16 DISPUTES

16.1 During any dispute, including but not limited to any dispute as to the validity of this Contract, it is mutually agreed that the Contractor shall continue its performance of the provisions of the Contract unless the Council requests in writing that the Contractor ceases performance.

16.2 If any dispute arises out of or in connection with the Contract, the parties shall promptly notify each other of the matter in dispute ("**Dispute**"), which shall in the first instance be referred to the Authorised Officer and the Contractor's Manager who shall use all reasonable skill, care and diligence to ensure that they receive the views of all parties and consider all solutions proposed and use their reasonable endeavours with the objective of resolving the dispute and achieving an agreed solution.

16.3 If a dispute arises between the Council and the Contractor in relation to any matter that cannot be resolved by the Authorised Officer and the Contract Manager, or where the Authorised Officer and the Contractor's Manager do not achieve within fourteen (14) days of notification of a Dispute a solution acceptable to all parties involved, and provided no right of termination has been exercised, they may refer such Dispute to the Dispute Resolution

Procedure. In the first instance each of the Council and the Contractor shall within a maximum of 28 Working Days of the Dispute being unresolved by the Authorised Officer and the Contract Manager, arrange for more senior representatives of both parties shall meet promptly and solely to in order to resolve the matter in dispute. Such meeting(s) shall take place as soon as practicable and in any event within [40] days of notification of the dispute, in good faith to discuss and seek to resolve the Dispute.

16.4 The persons named in Condition 16.2 above may, at their discretion, in the light of what is appropriate to the dispute, seek written or personal representations from the Authorised Officer and the Contract Manager and any other involved persons/parties if appropriate.

16.5 If the dispute cannot be resolved by the persons named in Condition 16.2 above within a maximum of ten (10) Working Days of the dispute being referred to them the dispute shall be then referred to a nominated Strategic Director of the Council (or his or her successor in title) and a nominated director of the Contractor for resolution.

16.6 If the dispute cannot be resolved by the persons named in Condition 16.5 within fifteen (15) Working Days of the dispute 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 will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (“the Mediation Notice”) to the other Party to the dispute requesting a mediation. A copy of the request should be sent to the CEDR. The mediation will start not later than ten (10) Working Days after the date of the Mediation Notice, and the costs of such mediation shall be borne in such proportions as the adjudicator may determine to be fair and reasonable in all the circumstances, or if the adjudicator makes no such determination by the Parties in equal proportions.

16.7 No party may commence any court proceedings/arbitration in relation to any dispute arising out of this Contract until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

17. GENERAL

17.1 Force majeure: Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Contractor from supplying the Services for more than 2 weeks, the Council shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Contractor.

17.2 Gratuities: the Contractor shall not, whether by himself or by any person employed by him to perform the Service, solicit or accept any gratuity or tip or any other form of money taking or reward,

17.3 Assignment and subcontracting:

- i. The Contractor shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Council.
- ii. The Council may at any time novate, assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent and the Contractor hereby consents to the Council dealing with the Contract in such manner and the Contractor

agrees to execute such documentation as the Council may require in order to affect such arrangement.

17.4 Notices:

- i. Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a Company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- ii. Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- iii. This clause 17.4 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

17.5 Waiver and cumulative remedies:

- i. A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- ii. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

17.6 Severance:

- i. If a court or any other competent Council finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- ii. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

17.7 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have Council to act as agent for, or to bind, the other party in any way.

17.8 Contracts (Rights of Third Parties) Act 1999: A person who is not a party to the Contract shall not have any rights under or in connection with it.

17.9 Variation: The Council may need to vary the Specification requirements in Schedule 1 as the project progresses. Any variation which affects the contract price will be agreed between the Contractor and the Council. Any other variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Council.

17.10 Governing law and jurisdiction: The Contract, 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Signed duly authorised for and on behalf of the Contractor
Company Name:

Signature: [Redacted]
Name: [Redacted]
Position: [Redacted]
Date: [Redacted]

Signed for and on behalf of the Mayor and Burgesses of the London Borough of
Merton

Signature: [Redacted]
Name: [Redacted]
Position: [Redacted]
Date: [Redacted]

SCHEDULE 1

THE SPECIFICATION

1.1 Background / Context.

The deadline for submissions 30September 2019 at midday

1.2 Objectives and Scope of the Work

See documents:

Specification of CCI Business Support Merton FINALX
Request for Quotation Business Support Merton FINALXX

These, together with the payment schedule at paragraph 6.2 of this contract will constitute the specification

1.3 Principal Requirements

Public liability insurance - £ 10 million

Employers Liability Insurance – £5 million

Professional Indemnity Insurance £1 million

SCHEDULE 2

PRICING SCHEDULE/TENDER RESPONSE

Fixed Fee Quote (exclusive of VAT)	
Daily Rate (exclusive of VAT)	
Hourly Rate (exclusive of VAT)	

Name of Bidder		
Signed	Authorised Signatory 1	Authorised Signatory 2
Print Name		
Job Title of Authorised Signatory		
Date		
Contact Number		
e-mail		

Schedule 3

Data Processing Instructions

1. The Contractor shall comply with any further written instructions with respect of processing received from the Council. Any such further instructions shall be incorporated into this Schedule.

2. Processing by the Contractor

2.1 Scope

Data will relate to attendees at screenings and participants in community events, and other material or events organised within the delivery of the specified services

2.2 Nature

Processing is expected to take the following forms:

- i. Collection of data through paper or online to enable communications through compilation in data bases, spreadsheets or email-lists
- ii. Use of individual data collected to enable communication through email or social media
- iii. Abstraction of individual data to enable anonymised analysis by postcode, protected characteristics, previous cultural engagement or such other factors as are relevant to evaluation of the programme's success in achieving its objectives
- iv. Removal of personal data when requested so to do by owner of that personal data, while ensuring the detail is still in the data sets to be measured for the programme
- v. Provision of a standard 'unsubscribe' option on all communications.

2.3 Purpose of processing

- i. To facilitate communication and feedback between audiences, participants, the programme, partners and funders to encourage audience attendance and participation
- ii. To assess success in achieving the programme's objectives, particularly sustained cultural engagement amongst communities who have historically had less engagement and the growth of Merton businesses in the cultural and creative sectors

2.4 Duration of processing

- i. Taking on material already held by the Cultural Advisory Group to the end of the programme and its final reports to funders, anticipated September 2020

2.5 Types of Personal Data

- Name
- Address (postcode)
- Online identifier(s)
- Telephone numbers
- Date of birth
- age
- Email address
- School attended
- Ethnicity
- Sexual orientation
- Sex
- Gender Reassignment
- Faith
- History of cultural engagement, eg previous cinema attendance

2.6 Categories of Data Subject

- Volunteers
- Audience members
- Participants (eg in events or films)
- Creative practitioners (eg film makers)
- Students/pupils
- Members of the public
- Service users
- Temporary workers
- Staff (of partners and stakeholders)

2.7 Data Retention

The abstracted, anonymised data will be the subject of formal and public reports. Personal data will not be retained without further consent of subjects after the closure of the programme in October 2020 (subject to extension of the project).