

**(1) MILTON KEYNES COUNCIL**

**and**

**(2) [ ] CONSULTANTS**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**CONTRACT FOR [ ]**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

***Ref:***

***Milton Keynes Council***

***Legal Department***

***Civic Offices***

***1 Saxon Gate East***

***Silbury Boulevard***

***Milton Keynes***

***MK9 3EJ***

## FORM OF CONSULTANCY CONTRACT

**THIS CONTRACT** dated the [ ] day of [ ] 201[ ] is between:

(1) **MILTON KEYNES COUNCIL** of, Civic Offices, 1 Saxon Gate East, Milton Keynes MK9 3EJ ("the **Council**"); and

(2) [ ] **CONSULTANTS** of [ ], being the company or person(s) to whom the Contract is awarded; (“the **Consultant**”).

each known as a “Party” to and collectively as “Parties” to this Contract.

**WHEREAS:-**

(1) The Council wishes, having taken consideration of the Consultant's relevant skills, knowledge and experience to engage the Consultant to provide certain consultancy services to the Council in relation to Children’s Safeguarding Practice Reviews and Safeguarding Adult Reviews.(“the **Services**”).

(2) The Consultant is an independent contractor willing to provide such Services to the Council in accordance with the terms and conditions of this Contract and the regulatory requirements, namely the Working Together to Safeguard and promote the Welfare of Children 2018 guidance and The Care Act 2014.

(3) The Parties, with the intention of creating legal relations have agreed terms between them for the provision of the Services as set out under this Contract.

**PRECONDITIONS:-**On or before the Commencement Date the Consultant shall produce to the Council, for inspection, documentary evidence that:  
  
 i) the required insurances;  
 ii) any required accreditations are properly in place and valid.

Failure to show the relevant documentation on or before the Commencement Date will render this Consultancy Agreement Null and Void.

**IT IS HEREBY AGREED AS FOLLOWS:-**

(1) The Council and the Consultant hereby agree and declare that this Form of Contract and the Schedules listed below and attached to this Form of Contract shall constitute the Contract.

(2) The Schedules are:

1. Conditions of Contract

2. Special Conditions

3. The Consultancy Services

4. Insurance

(3) The Consultant’s proposal together with this Contract shall constitute a binding agreement.

**SIGNING PAGE**

**IN WITNESS** of which this document is

**SIGNED** on behalf of   
**MILTON KEYNES COUNCIL**

Name….. …………………………..

Signature …………………………..

Position …………………………….

**IN WITNESS** of which this document is

**SIGNED** on behalf of the Consultant

Name….. …………………………..

Signature …………………………..

Position …………………………….

**SCHEDULE 1**

**CONDITIONS OF CONTRACT FOR PROVISION OF CONSULTANCY SERVICES**

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**1. DEFINITIONS AND INTERPRETATION**

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

|  |  |
| --- | --- |
| **"Accounting Period"** | means a period of four weeks or such other period as may be  used at the beginning and end of each financial year by the  Council for accounting purposes; |
| **“Authorised Officer”** | means a person appointed by the Council to exercise its rights and powers under this Contract. The Authorised Officer will be of at least Head of Service level and shall be able to make decisions under the Contract without the need for the matter to be escalated in the organisation. This will not limit in any way any other of the Councils rights or obligations; |
| **“Bribery Act”** | means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation; |
| **"Council"** | means Milton Keynes Council; |
| **"Charges"** | means the charges payable by the Council in consideration of the due performance of the Consultancy Services as specified in the Consultant’s tender; |
| **"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) which comprises Personal Data or Special Category Data ( defined in the GDPR);  (b) the release of which is likely to prejudice the interests of the Council or the Consultant respectively; or  (c) which is a trade secret; |
| **"Consultant"** | means the provider of the Services pursuant to the Contract; |
| **“Consultant Provider Party”** | means the Consultant's agents and Consultants, including each Sub-Consultant; |
| **“Consultant Provider Personnel”** | means all employees, agents, consultants and Consultants of the Consultant or of any Sub-Consultant; |
| **"Consultancy Services"** | means all or any part of the activities to be undertaken and completed by the Consultant pursuant to the Contract as referred to in the Specification or as amended from time to time in accordance with Clause 2.5; |
| **"Contract"** | means the contract between the Council and the Consultant for the provision of the Consultancy Services and comprises the Form of Contract, the Schedules and any other documents (or parts thereof) specified in the Form of Contract; |
| **“Contract Commencement Date”** | means the date for commencement of the Contract as specified in the Contract; |
| **“Contract Manager”** | means a person appointed by the Consultant to exercise its rights and powers under this Contract. The Contract Manager shall hold a senior position within the Consultant organisation and shall be able to make decisions under the Contract without the need for the matter to be escalated in the organisation. This will not limit in any way any other of the Consultant’s rights or obligations; |
| **"Contract Period"** | means (subject to earlier termination in accordance with its terms or by operation of law) the duration of the Contract, starting on the Contract Commencement Date, as set out in **Schedule 2**; |
| **“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach” and “Data Protection Officer”** | shall have the same meaning as set out in the GDPR; |
| **“Data Loss Event”** | means any event that results, or may result, in unauthorised access to Personal Data held by the Consultant under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract or in breach of any Data Protection Legislation, including any Personal Data Breach; |
| **“Data Protection Impact”** | means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data; |
| **“Data Protection Legislation”** | (i) the General Data Protection Regulations 2016/679, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy; |
| **“Data Subject Access Request”** | means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data. |
| **“DPA 2018”** | means the Data Protection Act 2018 |
| **"Form of Contract"** | means the form of contract between the Parties relating to the Consultancy Services to which the Schedules are annexed; |
| **“GDPR”** | means the General Data Protection Regulation 2016/679 and any subordinate legislation made under such Regulation from time to time as may be amended, replaced or re-enacted by any subsequent directive, statute, regulation, order, instrument, code or guidelines together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation; |
| **"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; |
| **“Law”** | means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Service Provider is bound to comply. |
| **“LED”** | means the Law Enforcement Directive (Directive (EU) 2016/680) |
| **“Living Wage”** | means the figure set annually for areas outside of London by the Centre for Research and Social Policy currently at Loughborough University or its successor or anybody which subsequently takes up the responsibility for setting the figure; |
| **“Living Wage Criteria”** | means circumstances where an individual works at any of the Council’s premises, and/or property owned or occupied by the Council, and/or land on which the Council is responsible for maintaining or on which it is required to work, for at least 2 hours per day over a period of 8 consecutive weeks. |
| **"Key Personnel"** | means, subject to Clause 4.2, those of the Consultant's personnel named as such in the Specification; |
| **"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; |
| **“Prohibited Act”** | means the following which constitute Prohibited Acts:  (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:  (i) induce that person to perform improperly a  relevant function or activity; or  (ii) reward that person for improper performance of a  relevant function or activity;  (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;  (c) committing any offence:  (i) under the Bribery Act;  (ii) under legislation creating offences concerning  fraudulent acts;  (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or  (iv) defrauding, attempting to defraud or conspiring to  defraud the Council; |
| **“Process” and “Processing”** | has the meaning given to it under the Data Protection Legislation and for the purposes of this Contract, it shall include both manual and automated processing. |
| **“Protective Measures”** | appropriate technical and organisational measures which may  include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it. |
| **"Specification"** | means the description of the Services as set out in the Specification; |
| **“Staff”** | means all and any persons employed or engaged by the Consultant in whatever capacity to perform its obligations under the Contract including the Consultant’s servants, agents, suppliers and Sub-Consultants used in the performance of its obligations under the Contract. |
| **“Sub-Contract”** | means any contract or agreement, or proposed contract or agreement between the Consultant and any third Party whereby that third Party agrees to provide to the Consultant the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services; |
| **“Sub-Consultant”** | means any Third Parties that enter into a Sub-Contract with the Consultant for delivery of all or part of the Services; |
| **“Sub-Processor”** | means any third party appointed to process Personal Data on behalf of the Consultant in relation to this Contract |
| **“Working Day”** | means any day save for Saturday, Sunday and any public holiday in England; |
| **"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; |

1.1 references to Clauses shall be to the Conditions of Contract contained in **Schedule 1** and references to the Schedules listed in the Form of Contract and references to paragraphs shall be to the relevant paragraphs of the Schedule in which the reference occurs;

1.2 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;

1.3 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;

1.4 headings are inserted for convenience only and shall not affect its construction;

1.5 the documents constituting the Contract are intended to be mutually explanatory. In the event of any conflict between any provision of the Conditions of Contract and a provision of any other Schedule (other than **Schedule** 2) then the Conditions of Contract 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;

1.6 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;

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

**2. CONSULTANCY SERVICES**

2.1 The Consultant warrant that he has considerable skill, knowledge and experience in providing services of the types constituting the Consultancy Services and shall promptly carry out and complete the Consultancy Services 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 and in accordance with the Contract. The Consultant is aware of the purposes for which the Consultancy Services are required and acknowledges that the Council is reliant upon the Consultant's expertise and knowledge in the provision of the Consultancy Services.

2.2 The Consultant shall obey all lawful directions of the Council relating to the performance of the Consultancy Services and use its best endeavours to promote the interests of the Council.

2.3 The Consultant shall ensure that the Consultancy Services and its performance thereof comply with all the 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 Consultancy 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 Consultancy Services and shall provide the Council with such reports of its work on the Consultancy Services at such intervals and in such form as the Authorised Officer may from time to time require.

2.5 Any request by either Party to amend the scope or execution of the Consultancy Services shall be dealt with by the Parties in accordance with the Contract and any change control provisions set out in **Schedule** 2.

2.6 No modification may be made to this Contract without the prior written permission of the Authorised Officer.

2.7 The Council may make time of the essence in the Contract by serving notice in writing on the Consultant.

**3. WORKING HOURS AND ADDITIONAL WORK**

3.1 Where the Charges or any part of them are calculated by reference to working days then, unless otherwise stated in the Contract, the normal working day for the Consultant's personnel shall be deemed to be at least eight [8] hours per day (excluding meal breaks) and part days shall be paid by reference to one eighth [1/8] of a day's Charges for each hour actually worked.

3.2 Holidays taken by Key Personnel shall be subject to the prior approval of the Authorised Officer, (not to be unreasonably delayed or 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 Consultancy Services and/or the Charges look likely to exceed any lump sum fee or maximum level specified in the Contract, the Consultant shall obtain prior written consent from the Council’s Procurement Manager 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.

3.6 Claims for Charges for additional work shall be submitted no more than three [3] months in arrears from the point of expenditure. Claims for Charges made more than three [3] months in arrears **will not** be accepted.

**4. CONSULTANT AND CONSULTANT'S PERSONNEL**

4.1 The Consultant undertakes to provide the personnel necessary for the performance of the Consultancy 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 Key Personnel available at all times for the purposes of providing the Consultancy Services. The Consultant may only make any changes in the Key Personnel (except in the event of the sickness, incapacity or resignation of any member of the Key Personnel) with the consent of the Authorised Officer provided that the Council is notified by the Consultant and the Consultant complies with the sickness and absence procedures set out in the Specification. For the avoidance of doubt, no charges shall be payable in respect of any period during which the Consultancy Services are not provided.

4.3 The Consultant shall procure that all personnel performing the Consultancy Services contract with the Consultant 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, without any liability to the Council (and the Consultant shall fully indemnify the Council in relation thereto), remove any member of its personnel from involvement in the Consultancy Services if required to do so by the Authorised Officer and shall provide at no extra cost a suitable replacement satisfactory to the Authorised Officer as soon as practicable and in any event within two [2] working days.

4.5 The Parties acknowledge and agree that the Contract constitutes a contract for the provision of services and not a contract of employment. For the avoidance of doubt it is expressly stated that the Consultant is an independent consultant 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 (whether under TUPE or otherwise).Accordingly, , the Consultant shall at all times indemnify the Council and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have assumed or been imposed with the liability or responsibility for the Consultant or the Consultant’s personnel (or any of them) as an employer, whether during the Contract Period or arising from termination or expiry of the Contract.

4.6 Where the Consultant or any Consultant personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Consultant shall:

(a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and

(b) indemnify the Council against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Consultant or any Consultant personnel.

4.7 The Consultant shall pay at least the Living Wage to all its employees who are employed in connection with the Consultancy Services and who meet the Living Wage Criteria

**5. COUNCIL STAFF**

The Council undertakes that where participation by its own staff is necessary in the performance of the Consultancy 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 Consultancy Services.

**6. OFFICE FACILITIES**

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 the Contract.

**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 employees, agents and subConsultants shall whilst present on the Council’s premises:

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

* + 1. 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;
    2. comply with the Council’s equal opportunities policies and procedures and all statutory provisions concerning equal opportunities;
    3. comply with the Councils Financial Regulations;
    4. comply with the Councils Contract Procedure Rules;

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

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

7.2 In the event that the Consultant or any of the Consultant’s employees, agents or sub – Consultants fails to comply with any of the obligations of this Clause 7 the Consultant shall remove such employee, agent or subConsultant and provide suitable replacement personnel and the Consultant shall fully indemnify the Council against any liability due to a breach of the provisions of this Clause 7.

7.3 The Consultant acknowledges, and undertakes to inform all its employees, agents and subConsultants 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. FEE AND TERMS OF PAYMENT**

8.1 In consideration of and subject to the due performance by the Consultant of the Consultancy Services, the Council shall pay the Consultant the Charges in accordance with the procedures detailed in the Contract.

**Fees**

8.2 The Council agrees to pay a Daily rate of £[ ] to the Consultant for a maximum of [insert number] of days.

8.3 The Consultant shall **not be entitled** to reimbursement for expenses unless it has been explicitly stated in the Contract, in which case the Consultant shall supply appropriate evidence of expenditure in a form acceptable to the Authorised Officer.

8.4 Where the Consultant sub-contracts any part of the Consultancy Services to a Third Party, the Consultant is responsible for payments to that Third Party. It shall be a term of the sub-contract that payment is to be made of undisputed sums by the Consultant to the sub-Consultant within a specified period not exceeding 30 days from receipt of a valid invoice, as defined by the sub-contract requirements. Full details of any such payment shall be submitted by the Consultant, on its own invoice, to the Authorised Officer.

8.5 Invoices not meeting all of the requirements contained in the Contract will not be accepted by the Council and will be returned to the Consultant for re-submission.

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

8.7 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.

8.8 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 however 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.

8.9 Subject to Clause 8.8, the Council shall pay any valid invoice submitted by the Consultant in accordance with Clause 8.1 within thirty [30] days of receipt by the Council of such invoice. The Council shall pay such invoice(s) by BACS (Bank Automated Clearing System) if it so chooses or any alternate means as agreed between the Council and the Consultant. If any sum under the Contract is not paid by the Council when due then the Consultant may claim interest on such overdue sum from the due date until payment is made at two percent [2%] per annum over the Bank of England Bank Rate from time to time. No interest shall accrue in respect of sums genuinely disputed during the period of dispute. The Consultant is not entitled to suspend delivery of the provision of the Consultancy Services as a result of any sums being outstanding.

8.10The Contract Price is fixed at an agreed daily rate and shall not be subject to any increase whatsoever by the Consultant during the Contract Period.

1. **CONTRACT PERIOD**

9.1 The Contract is for the Contract Period stated in the Contract, commencing on the Contract Commencement Date and may be extended by the Council for such further period as stated in the Contract subject to satisfactory performance by the Consultant during the Contract Period.

9.2 The Conditions in this Contract will apply throughout any such extended period.

**10. RECORDS AND AUDIT**

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 Consultancy 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 (subject to the Council paying reasonable photocopying costs).

**11. INDEMNITY AND INSURANCE**

11.1 The Consultant shall indemnify the Council against all legally enforceable actions costs claims demands and liability arising directly out of a failure by the Consultant to exercise reasonable skill and care in the performance of the Services. The Council shall mitigate any actions costs claims demands and liability arising under this Clause. The Consultant’s liability to the Council under this Clause shall cease six [6] years from the date of completion of the Services.

11.2 Notwithstanding anything to the contrary contained in this Contract, the liability of the Consultant under or in connection with the Contract whether in contract or in tort, in negligence, for breach of statutory duty or otherwise (other than in respect of personal injury or death) shall not exceed £2,000,000 [two million pounds].

11.3 The Consultant shall not be responsible for and shall not indemnify the Council for losses to the extent such losses are caused by the negligence of the Council, its employees or agents.

11.4 Further to Clause 4.5, the Consultant agrees to indemnify and keep indemnified the Council in full in respect of any and all claims that may be made by the relevant authorities against the Council in respect of income tax demands or national insurance or similar contributions in relation to the provision of the Consultancy Services by the Consultant.

11.4 During the term of the Contract and for a period of six [6] years thereafter (without prejudice to its obligations under the Contract), the Consultant shall have in force and shall require any sub-Consultant to have in force with a reputable insurer:

11.4.1 employers liability insurance for such sum and range of cover stated in **Schedule** 4, unless otherwise agreed by the Council in writing and detailed in the Contract; and

11.4.2 public liability insurance for such sum and range of cover stated in **Schedule** 4, unless otherwise agreed by the Council in writing and detailed in the Contract; and

11.4.3 professional indemnity insurance for such sum and range of cover stated in **Schedule** 4, unless otherwise agreed by the Council in writing and detailed in the Contract;

11.5 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. The provision of such evidence shall be a Clause precedent to payment of the Charges.

11.6 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.

11.7 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).

11.8 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. WARRANTY**

12.1 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:-

* + 1. without prejudice to the provisions of Clause 12.1.2, 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 within one year from completion of the Consultancy Services; and

12.1.2 the Council shall be entitled to engage another person to carry out the Consultancy Services, in whole or in part, and all additional expenditure properly incurred by the Council in having such services carried out shall be recoverable by the Council from the Consultant.

12.2 The Consultancy Services and any documentation (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 Consultancy Services are carried out or on which any items supplied are operated.

12.3 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.

**13. ASSIGNMENT AND SUB-CONTRACTING**

13.1 The Council may assign the Contract or any part of it.

13.2 The Consultant shall not assign or sub-contract any part of the Contract without the prior written consent of the Safeguarding Board. The granting of any consent to sub-contract any part of the Contract shall not relieve the Consultant of any obligation or duty attributable to it under the Contract.

**14. INTELLECTUAL PROPERTY RIGHTS**

14.1 The Consultant retains copyright of all drawings, documents, etc, produced as part of the works - but grants to the Council a full and exclusive licence to use and/or publish the documentation without permission in any way it sees fit, during and after the project, though this does not extend to granting rights to a third party or nominee.

14.2 All Intellectual Property Rights developed by the Consultant and used in the performance of the Contract which do not vest in the Council pursuant to Clause 14.1 shall remain or be vested in the Consultant who grants to the Council a full and exclusive licence to use and/or publish the documentation without permission in any way it sees fit, during and after the project, though this does not extend to granting rights to a third party or nominee.

14.3 Copyright in all documentation and Intellectual Property Rights in all other items supplied by the Consultant to the Council in connection with the Contract shall remain the property of the Consultant.

14.4 The Consultant shall ensure that any Intellectual Property Rights which belong to a third Party and which are licensed to the Council in accordance with this Clause 14 shall be licensed or used on such terms that permit the Council to use such rights for the purposes set out in this Clause 14.

14.5 All sums due to Third Parties in respect of the use of any Intellectual Property Rights connected with the obligations under this Clause 14 are included in the Charges that the Council have agreed to pay by the Consultant.

14.6 The Consultant shall indemnify and hold harmless the Council against any actions, claims, demands, costs, charges or expenses (including costs) that arise from or are incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights and against all costs and damages of any kind which the Council may incur in or in connection with any actual or threatened proceedings before any court or arbitrator and shall conduct negotiations as may be necessary from time to time having due regard to the Council's interests provided that the Council gives notice to the Consultant of any infringement of Intellectual Property Rights upon becoming aware of the same.

14.7 The Consultant shall reimburse the Council's reasonable costs incurred in complying with the provisions of Clause 14.6.

14.8 The Consultant shall have no liability to the Council in respect of an Intellectual Property Rights infringement to the extent it results from any breach of the Council's obligations under this Contract.

**15. CONFIDENTIALITY**

15.1 In respect of any Confidential Information it may receive from the other Party (“the **Discloser**”) and subject always to the remainder of this Clause 15, 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:

15.1.1 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;

15.1.2 the provisions of this Clause 15 shall not apply to any Confidential Information which:-

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

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

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

(d) the disclosure of which is required to ensure the compliance of the Council with the Freedom of Information Act 2000 (the FOIA).

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

15.2.1 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;

15.2.2. 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.

15.3 Where it is considered necessary in the opinion of the Council, the Consultant shall and shall ensure that its staff or such professional advisors or consultants 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 staff, its professional advisors and consultants are aware of the Consultant’s confidentiality obligations under these terms and conditions.

15.4 Nothing in this Clause 15 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 15 as if any reference to the Consultant in this Clause 15 were a reference to such holding company.

15.5 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 Consultancy 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.

15.6 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.

15.7 The Consultant agrees that:

15.7.1 without prejudice to the generality of Clause 15.2, the provisions of this Clause 15 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;

15.7.2 subject to Clause 15.7.3, the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Council;

15.7.3 where the Council is managing a request as referred to in Clause 15.7.2, 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.

15.8 The Consultant shall and shall procure that its subConsultants shall:

15.8.1 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;

15.8.2 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

15.8.3 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 or EIR (as appropriate).

15.9 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.

15.10 This Clause 15 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 15 shall remain in force for a period of three [3] years after the termination or expiry of this Contract.

15.11 In the event that the Consultant fails to comply with this Clause 15, the Council reserves the right to terminate the Contract by notice in writing with immediate effect.

* 1. DATA PROTECTION
  2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Consultant is the Processor. The only processing that the Consultant is authorised to do is listed in Schedule 3 by the Council and may not be determined by the Consultant.
  3. The Consultant shall notify the Council immediately if it considers that any of the Council’s instructions infringe the Data Protection Legislation.
  4. The Consultant shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Council, include:

1. a systematic description of the envisaged processing operations and the purpose of the processing;
2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
3. an assessment of the risks to the rights and freedoms of Data Subjects; and
4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data
   1. The Consultant shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
5. process that Personal Data only in accordance with Schedule 3 unless the Consultant is required to do otherwise by Law. If it is so required, the Consultant shall promptly notify the Council before Processing the Personal Data unless prohibited by Law;

ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:

nature of the data to be protected;

harm that might result from a Data Loss Event;

state of technological development; and

cost of implementing any measures.

ensure that:

the Consultant Staff do not process Personal Data except in accordance with this Contract (and in particular Schedule 3);

it takes all reasonable steps to ensure the reliability and integrity of any Consultant Staff who have access to the Personal Data and ensure that they:

1. are aware of and comply with the Consultant’s duties under this clause 16;
2. are subject to appropriate confidentiality undertakings with the Consultant or any Sub-Processor;
3. are informed of the confidential nature of the Personal Data and 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 or as otherwise permitted by this Contract; and
4. have undergone adequate training in the use, care, protection and handling of Personal Data.

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:

the Council or the Consultant has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;

the Data Subject has enforceable rights and effective legal remedies;

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

the Consultant complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data.

at the written direction of the Council, delete, destroy, or return Personal Data (and any copies of it) to the Council at any time during the contract period or on termination or expiry of the Contract unless the Consultant is required by Law to retain the Personal Data;

where the Consultant is destroying Personal Data pursuant to clause 16.4 (e) above, it shall do so in a secure manner and it shall provide certificated evidence of secure destruction to the required standards (HMG Information Security Standards);

* 1. Subject to clause 16.6 the Consultant shall notify the Council immediately if it:
     + - 1. receives a Data Subject Access Request (or purported Data Subject Access Request);
         2. receives a request to rectify, block or erase any Personal Data;
         3. receives any other request, complaint or communication relating to either party’s obligations under the Data Protection Legislation;
         4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
         5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
         6. becomes aware of a Data Loss Event; Personal Data Breach or any breach of data protections obligations under this Contract or under the Data Protection Legislation.
  2. The Consultant’s obligation to notify of the Council under clause 16.5 shall include the provision of further information to the Council in phases, as details become available.
  3. The Consultant shall provide the Council with full assistance in relation to either party’s obligations under the Data Protection Legislation and any complaint, communication or request made under clause 16.5 (within the timescales reasonably required by the Council) including promptly providing:

the Council with full details and copies of the complaint, communication or request;

such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

the Council, at its request, with any Personal Data it holds in relation to a Data Subject;

assistance as requested by the Council following any Data Loss Event;

assistance as requested by the Council with respect to any request from the Information Commissioner’s Office. The Consultant shall maintain complete and accurate records and information to demonstrate its compliance with this clause 16.

* 1. The Consultant shall allow and shall procure that all Sub-Processors allow for audits of their Data processing activity by the Council or the Council’s designated auditor. The Consultant shall comply with and shall procure that the Sub-Processors comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Consultant and the Sub-Processors are in full compliance with the obligations under this Contract.
  2. The Consultant shall designate a Data Protection Officer if required by the Data Protection Legislation to do so.
  3. The Consultant shall nominate a data protection lead to be responsible for data protection and for providing the Council with regular reports on information security matters, including details of all incidents of Data Loss Event and breach of confidence. The Consultant shall ensure that the Council is at all times kept informed of the identity and contact details of the data protection lead.
  4. The Consultant agrees to indemnify and keep the Council indemnified and to defend the Council at its own expense against all losses, costs, claims, damages or expenses incurred by the Council or for which the Council may become liable due to any failure by the Consultant or its Staff or Consultant Party to comply with any of their obligations under this clause 16 and/or under the Data Protection Legislation and/or under any other provision of this Contract. The Council may recover as a debt from the Consultant any sums owed under this indemnity provision.

Responsibilities when engaging Sub-Contractors as a Sub-processor

* 1. In addition to the provisions of clause 13 (Assignment and Sub-Contracting) if the Consultant is to require any Sub-Contractor to be a Sub-processor, and before allowing the Processing of Personal Data by such a Sub-Contractor, the Consultant must:
     + - 1. notify the Council in writing of the intended Sub-processor and processing;
         2. obtain the written consent of the Council;
         3. where Council consent is given, enter into a written Contract with the Sub-processor which give effect to the terms set out in this clause 13 such that they apply to the Sub-processor; and
         4. provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

Consultant shall remain fully liable for all acts or omissions of any Sub-processor.

* 1. The Council may at any time on not less than thirty (30) days’ notice to the Consultant revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract)
  2. The Council may at any time on not less than thirty (30) days’ notice to the Consultant amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner’s Office.
  3. The Consultant shall comply with and shall ensure that any Sub-processor complies with all relevant obligations under the Data Protection Legislation.
  4. The provision of this clause 13 shall apply during the Contract Period and indefinitely after its expiry.

**17. CONFLICT OF INTEREST**

17.1 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 Consultancy Services are provided, in any capacity. For the avoidance of doubt this Clause shall not prevent the Consultant from providing services to an existing Council 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 Council:-

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

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

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

17.2 The Consultant shall manage possible conflicts in procurement projects and shall not be   
 involved in the decision making process in any way in respect of:

i) Options Appraisals;

ii) Evaluation criteria and weightings; or

1. Evaluation of bids
   1. If the consultant is involved in any procurement project they shall:

i) sign confidentiality agreements to ensure that data is not shared with anyone else within the existing Consultant/consultant; and

ii) store securely all data that is specific to a procurement project so it cannot be accessed by others (including those within the existing Consultant).

17.4 This Clause shall survive the expiry or termination of the Consultant's appointment (whether pursuant to Clause 17 or otherwise) for a period of one year and shall continue in full force and effect.

**18. TERMINATION**

18.1 The Council shall be entitled to terminate the Consultant's appointment by giving fourteen days [14] notice in writing to the Consultant and the Council’s obligation to pay for the Consultant’s services shall be limited to the day when the notice period expires.

18.2 Where the Council terminates the Contract under Clause 18.1, the Council shall indemnify the Consultant against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Consultant by reason of the termination of the Contract, provided that the Consultant takes all reasonable steps to mitigate such loss. Where the Consultant holds insurance, the Consultant shall reduce its unavoidable costs through any such insurance. The Consultant shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Consultant as a result of termination under Clause 18.1.

18.3 The Council shall not be liable under Clause 18.2 to pay any sum which:

(a) was claimable under insurance held by the Consultant, and the Consultant has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

(b) when added to any sums paid or due to the Consultant under the Contract, exceeds the total sum that would have been payable to the Consultant if the Contract had not been terminated prior to the expiry of the initial Contract Period; or

(c) is a claim by the Consultant for loss of profit, due to early termination of the Contract.

18.4 The Council shall be entitled to terminate the Consultant's appointment forthwith by written notice to the Consultant if:-

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

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

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

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

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

18.4.6 the Consultant commits a breach of Clause 21;

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

18.4.8 the Consultant commits any continuing or material breach of any provision of this Contract and in the case of such a breach which is capable of remedy fails to commence within two [2] days to attempt to remedy or thereafter fails to remedy the same within seven [7] days (or such longer period as the Council may specify) after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;

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

18.4.10 If the Consultant, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Council shall be entitled to terminate this Contract by notice to the Consultant or Consultant’s Representative with immediate effect.

18.4.11 **(EITHER)** where in the opinion of the Council the value of the Contract is likely to exceed the OJEU advertised value if allowed to continue for the full Contract Period, **(OR)** where in the opinion of the Council the value of the Contract is likely to exceed the applicable OJEU threshold if allowed to continue for the full Contract Period.

18.5 Without prejudice to Clause 14, 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.

18.6 The rights to terminate this Contract given by this Clause 18 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.

18.7 Without prejudice to Clause 18.4, neither Party shall have a claim against the other by virtue of the early termination of this Contract pursuant to this Clause 18.

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

18.8.1 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;

18.8.2 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

18.8.3 provide a signed statement to the Council that he has complied fully with his obligations under this Clause 18.

18.9 The Consultant may terminate this Contract if the Council is in material breach of its obligations to pay undisputed charges to the Consultant by giving the Council thirty [30] days notice specifying the breach and requiring its remedy by that date, which unless remedied will allow immediate termination by the Consultant. The Consultant’s right of termination under this Clause shall not apply to non-payment of the charges where such non-payment is due to the Council exercising its rights under Clause 8.7.

**19. ADVERTISING**

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

**20. NON-WAIVER OF RIGHTS**

20.1 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.

**21**. **PREVENTION OF BRIBERY**

21.1 The Consultant:

21.1.1 shall not, and shall procure that any Consultant Provider Party and all Consultant Provider Personnel shall not, in connection with this Contract commit a Prohibited Act;

21.1.2 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 Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

21.2 The Consultant shall:

21.2.1 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;

21.2.2 within fourteen [14] Working Days of the Contract Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Consultant) compliance with this Clause 21 by the Consultant and all persons associated with it or other persons who are supplying Services in connection with this Contract. The Consultant shall provide such supporting evidence of compliance as the Council may reasonably request.

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

21.4 If any breach of Clause 21.1 is suspected or known, the Consultant must notify the Council immediately.

21.5 If the Consultant notifies the Council that it suspects or knows that there may be a breach of Clause 21.1, the Consultant 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. This obligation shall continue for six [6] years following the expiry or termination of this Contract .

21.6 The Council may terminate this Contract by written notice with immediate effect if the Consultant, Consultant Provider Party or Consultant Provider Personnel (in all cases whether or not acting with the Consultant Provider's knowledge) breaches Clause 21.1. In determining whether to exercise the right of termination under this Clause 21.6, the Council shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Consultant or a senior officer of the Consultant or by an employee, Sub-Consultant or supplier not acting independently of the Consultant. The expression "not acting independently of" (when used in relation to the Consultant or a Sub-Consultant) means and shall be construed as acting:

21.6.1 with the authority; or,

21.6.2 with the actual knowledge;

of any one or more of the directors of the Consultant or the Sub-Consultant (as the case may be); or

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

21.7 Any notice of termination under Clause 21.6 must specify:

21.7.1 the nature of the Prohibited Act;

21.7.2 the identity of the Party whom the Council believes has committed the Prohibited Act; and

21.7.3 the date on which this Contract will terminate.

21.8 Despite Clause 31 (Dispute Resolution Procedure), any dispute relating to:

21.8.1 the interpretation of Clause 21; or

21.8.2 the amount or value of any gift, consideration or commission,

shall be determined by the Council and its decision shall be final and conclusive.

21.9 Any termination under Clause 21.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

**22. ILLEGALITY AND SEVERABILITY**

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 authority, 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.

**23. NOTICES**

23.1 Any notices or other documents to be given under the Contract shall be in writing in the English language 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 one Party may from time to time designate by written notice to the other.

23.2 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.

23.3 Any such notices or other documents shall be deemed to have been received by the addressee two 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.

**24. THIRD PARTY RIGHTS**

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.

25. DISCRIMINATION

25.1 The Consultant or its agents, employees or sub-Consultants shall pay heed and follow the Council’s Equality Policy (a copy of which is on the website) and not unlawfully discriminate as defined in the Equality Act 2010. They should be mindful of the requirements of the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof these Acts and their associated regulations, duties and statutory codes of practice. In particular when carrying out a function for the council they shall fully comply with the section 149 of the Equality Act and have due regard to the elimination of Equality, the advancement of equality of opportunity and the promotion of good community relations. For more details of how this might affect the activities, the Consultant can discuss this with the Council’s Equality & Diversity Officer.

25.2 The Consultant shall notify the Council immediately of any investigation of or proceedings against the Consultant in relation to the Equality and Human Rights 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.

25.3 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-Consultants.

25.4 The Consultant shall impose on any sub-Consultant obligations substantially similar to those imposed on the Consultant by this Clause 25.

**26. LANGUAGE**

English shall be the language of the Contract and all documentation or information required or produced in the course of the Consultant's performance shall be in English.

**27. VARIATIONS**

At any time during the term of the Contract the Council may require, or the Consultant may recommend, variations to the Contract. The Authorised Officer shall advise the Consultant of any agreed variations in writing. If the Consultant accepts the proposed variation, it shall provide written confirmation of its agreement to the Authorised Officer.

**28. SECURITY FOR DUE PERFORMANCE**

28.1 In accordance with the Councils Contract Procedure rules (subject to the Contract value) the Council ***may request*** that the Consultant shall provide (on signature of the contract) a performance bond in a form approved by the Council. The Council will not be obliged to make any payments under the Contract until the requested performance bond has been provided in a form satisfactory to the Council.

28.2 Should the Consultant be a Subsidiary Company, the Council ***may request*** that the Consultant shall provide (at its own expense, on signature of the Contract) a Parent Company Guarantee (from the Consultant's ultimate parent company) The Council will not be obliged to make any payments under the Contract until the requested parent company guarantee has been provided in a form satisfactory to the Council.

**29. NOVATION OR TRANSFER**

Within fourteen [14] days of any written request by the Council to the Consultant, the Consultant will execute one or more agreements in a format specified by the Council by which the Consultant shall transfer all or such part as may be specified by the Council of its rights and obligations under this Contract to one or more third Parties to be nominated by the Council.

**30. ENTIRE AGREEMENT**

30.1 Subject to Clause 30.4 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 tender in respect of the Contract or any incorrect or incomplete information howsoever obtained.

30.2 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.

30.3 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.

30.4 Nothing in Clauses 30.2 and 30.3 or otherwise in the Contract will exclude any liability for fraudulent misrepresentation.

**31. DISPUTE RESOLUTION**

31.1 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).

31.2 If a dispute arises between the Council and the Consultant in relation to any matter which cannot be resolved by the Authorised Officer and the Contract Manager either of them may refer such dispute to the Dispute Resolution Procedure.

31.3 In the first instance each of the Council and the Consultant shall arrange for a more senior representative than those referred to in Clause 31.2 to meet solely in order to resolve the matter in dispute. Such meeting(s) shall take place within 21 days of the date of the Commencement of the relevant dispute shall be minuted and shall be chaired by the Council (but the chairman shall not have a casting vote). 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.

31.4 If the meeting(s) referred to in Clause 31.3 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.

31.5 The mediation shall commence within 28 days of the Mediation Notice being served. 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.

**32. REMEDIES CUMULATIVE**

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**33. QUALITY ASSURANCE AND BEST VALUE**

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 authority 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.

**34. COUNTERPARTS**

The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

**35. GOVERNING LAW**

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.

**36. FORCE MAJEURE**

36.1 Notwithstanding anything else contained in this Contract, neither Party shall be liable for any delay in performing its obligations hereunder if such delay is caused by circumstances beyond its reasonable control (including without limitation any delay caused by any act or omission of the other Party) provided however that any delay by a sub-Consultant or supplier of the Party so delaying shall not relieve that Party from liability for delay except where such delay is beyond the reasonable control of the sub-Consultant or supplier concerned. Subject to the Party so delaying promptly notifying the other Party in writing of the reasons for the delay (and the likely duration of the delay), the performance of such Party’s obligations shall be suspended during the period that the said circumstances persist and such Party shall be granted an extension of time for performance equal to the period of the delay. Save where such delay is caused by the act or omission of the other Party (in which event the rights, remedies and liabilities of the Parties shall be those conferred and imposed by the other terms of this Contract and by law):

36.2 Any costs arising from such delay shall be borne by the Party incurring the same;

36.3 Either Party may, if such delay continues for more than four [4] weeks, terminate this Contract forthwith on giving notice in writing to the other in which event neither Party shall be liable to the other by reason of such termination [save that the Council shall pay the Consultant a reasonable sum in respect of any work carried out by it prior to such termination and for that purpose the Consultant may deduct such sum from any amounts previously paid by the Council under this Contract (the balance (if any) of which shall be refunded to the Council whether paid by way of a deposit or otherwise)];

36.4 Both Parties will in any event use all reasonable endeavours to mitigate the impact of any event of force majeure and to recommence performance of their obligations under this Contract as soon as reasonably possible.

**37.** **BLACKLISTING**

37.1 In accordance with Section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRA), the Consultant hereby confirms that it does not rely on blacklisting in respect of any employment decisions.

37.2 Any breach of this Clause will be regarded as a fundamental breach.

**SCHEDULE 2 - SPECIAL CONDITIONS OF CONTRACT [Not Used]**

[ ]

Key Personnel under this contract are:

1. [ ]

**SCHEDULE 3 - THE CONSULTANCY SERVICES**

[ ]

**Processing, Personal Data and Data Subjects**

1. The Consultant shall comply with any further written instructions with respect to processing by the Council.

2. Any such further instructions shall be incorporated into this Schedule 3.

|  |  |
| --- | --- |
| **Description** | **Details** |
| **Subject Matter of the Processing** | *This will be dependent on the case. We will write it something like this…”subject matter is Child A and their mother, father, sibling and maternal grandmother” or*  *“Subject matter is Adult B and her partner Adult C”* |
| **Duration of the Processing** | *This will be defined by the scope of the review* |
| **Nature and Purposes of the Processing** | *The nature of the processing is collecting agency information on individuals or families who have experienced death or serious harm of a child or vulnerable adult and are subject to a safeguarding adult or serious case review.*  *The purpose of the processing is to review the multi-agency working or how a single agency worked with the family in order to elicit learnings that can be used to improve safeguarding practice across the Milton Keynes workforce.*  *The reviews are a statutory obligation of Milton Keynes Safeguarding Board under the Care Act 2014 and Working Together to Safeguard Children 2018.* |
| **Type of Personal Data** | *Names, DOB,s, addresses, family members, medical notes, engagement history with health and social care services, diagnosis of any mental illness or learning disabilities, criminal record history.* |
| **Categories of Data Subject** | *Staff members, volunteers, agency managers, adult or child who has died or suffered significant harm, parents/carers and other significant others of child or adult who has died or experienced significant harm, commissioners.* |
| **Plan for return and/or destruction of the data once the processing is complete UNLESS required under union or member state law to preserve that type of data.** | *Data for safeguarding adult reviews will be kept for a period of 10 years.*  *Data for a serious case review will be kept for a period of 10 years or until the child is 25.*  *Data will be stored on the MKC server in the MK Together restricted folder and deleted when it has reached the retention period.*  *Serious case reviews are published on the NSPCC website and at that point subject to NSPCC retention policies and procedures.* |

**SCHEDULE 4**

**INSURANCE**

The Consultant must fully comply with the insurance requirements detailed in Clause 11.

1. The indemnity provided by the Employers Liability Policy is not less than £5,000,000 (five million pounds) for any one claim or series of claims arising from one event.

2. The indemnity provided by the Public Liability Policy is not less than £5,000,000 (five million pounds) for any one claim with an unlimited number of claims in any one period of insurance.

3. The indemnity provided by the Professional Indemnity Policy is not less than £2,000,000 (two million pounds) or such higher limit as the Council may reasonably require (and as required by law) from time to time for each individual claim.