**DATED**

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**Consultancy agreement**

between

**ASHFORD BOROUGH COUNCIL**

and

**[CONSULTANT'S NAME]**

THIS AGREEMENT is made on the 2022

BETWEEN:

1. Ashford Borough Council of Civic Centre, Tannery lane, Ashford TN23 1PL ("the Council"); and
2. [INDIVIDUAL NAME] of [ADDRESS] (the “Consultant”)

# Definitions and interpretation

* 1. In this Agreement the following words shall have the following meanings:-

“Agreement” means the agreement between the Council and the Consultant to which these conditions and Schedules, as referenced therein, shall apply and for the avoidance of doubt shall include any variations subsequently agreed by the parties in writing.

“Commencement Date” 2022

“Confidential Information” means all information which is obtained by the Consultant from the Council pursuant to this Agreement

“Consultant’s means the person appointed by the Consultant to act on its behalf

Authorised Representative” for the purpose of managing this Agreement

“Council’s means the person appointed by the Council to act on its behalf

Authorised Representative” for the purpose of managing this Agreement

“Rates/Fees” means the financial remuneration for the Services as detailed in Schedule 2 to this Agreement.

“Services” means the services to be supplied by the Consultant as described in Schedule 1.

“Specification” means the description, standards, methods and techniques to be

used in executing the Services as specified in Schedule 3

“Working Day” means Monday to Friday including bank holidays.

* 1. Where appropriate, the singular includes the plural and vice versa. Words importing one gender include all other genders
  2. Persons includes companies and all other legal entities.
  3. Unless otherwise stated, any reference to a provision of any legislation is a reference to that provision as amended, extended or re-enacted by any subsequent legislation.
  4. The headings in this Agreement are for convenience only and will not affect its interpretation.
  5. Reference to a clause or schedule is to the corresponding clause or schedule in this Agreement unless stated to the contrary. The schedules to this Agreement are an integral part of this Agreement and any reference to this Agreement includes a reference to the schedules.
  6. Words and expressions defined in this Agreement, unless the context otherwise requires, have the meanings ascribed to them in this Agreement.

# Appointment and length of appointment

* 1. The Council hereby appoints the Consultant to provide the Services from the Commencement Date for a period of [weeks/months/years] expiring on 2022 by effluxion of time, or subject to the termination arrangements below.
  2. The Council may, by giving written notice to the Consultant not less than 1 Month prior to expiration of the Agreement, extend the Agreement for a further period of up to 12 Month(s). The provisions of the Agreement will apply throughout any such extended period.

# Consultant’s Obligations

* 1. The Consultant shall provide the Services:

1. with reasonable care and skill;
2. in accordance with the Specification;
3. in accordance with all written instructions of the Council’s Authorised Representative;
4. with due regard to all relevant health and safety legislation and code of practice;
5. so as to serve and promote the interests of the Council;
6. complying with all law.
7. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.
   1. The Consultant will act upon all written instructions issued by the Council’s Authorised Representative in a timely manner, including but not limited to any variation in relation to an addition, modification, deferment, omission, reduction from or substitution of any of the Services.
   2. The Consultant will ensure that the Services are carried out by appropriately qualified personnel who are acceptable to the Council’s Authorised Representative and will replace

immediately any person who the Council’s Authorised Representative reasonably requires replacing.

* 1. No provision of this Agreement will operate to exclude or restrict the consultant’s liability under statute or common law for any goods that the Consultant supplies, or has supplied, for use on, or incorporation in to the Services.
  2. Any sub-consultants directly appointed by the Consultant will be under the direct control and supervision of the Consultant at all times and the Consultant will be and remain liable under the Agreement for all work subcontracted by him and for acts defaults or neglects of any sub-contractor his agents and servants.
  3. The Consultant will keep the Council’s Authorised Representative fully and promptly informed in writing of all matters in relation to the Services which may have programme, cost or contractual implications.
  4. The Council and Consultant agree and acknowledge that the Council has relied on, and will be relying on, the Consultant’s expertise in carrying out the Services and also on the accuracy of all statements made and advice given by the Consultant in connection with the Services.
  5. The Consultant shall comply at its own expense with any statutory requirements and industry standards.
  6. Subject to clause 19 *Force Majeure* The Council will provide the Consultant with all the facilities, resources, information and access to the Council’s premises (where safe and appropriate in the opinion of The Council) that are reasonably necessary to carry out the Services.
  7. The Consultant’s Authorised Representative shall be available for consultation with the Council’s Authorised Representative at all reasonable times.

# Price and Payment

* 1. In consideration of the Consultant carrying out the Services, the Council will pay to the Consultant fees upon the basis agreed and contained in Schedule 2 together with any correctly charged V.A.T. that is applicable.
  2. In order for the invoice to be valid, it will have to be certified correct by the Council’s Authorised Representative upon receipt in line with the payment profile detailed at Schedule 2.
  3. The Council will pay the Consultant for each contractually correct invoice within thirty (30) days following receipt.
  4. In the event of the Council’s Authorised Representative disputing any invoices, the Council will have liability to pay only the undisputed invoices until such a time as the dispute is resolved.

# Expenses

* 1. Expenses will be paid at the rate specified upon the basis agreed and set out in Schedule 2. No other expenses will normally be payable other than in exceptional circumstances where this has been agreed in advance by the Council’s Authorised Representative.
  2. In the exceptional circumstances above, supporting evidence must be provided with expense claims and the Council reserves the right not to pay the approved incurred expenses if relevant supporting evidence is not provided.

# Termination

* 1. Either party may terminate this Agreement by giving the other party 1 months’ notice in writing for any reason.
  2. The Council’s Authorised Representative may by notice in writing to the Consultant terminate this Agreement with immediate effect without liability for compensation or damages, in the following occurrences:

1. if the Consultant refuses or neglects to execute the Services or any part of them, or commits any breach of any obligation imposed upon him by this Agreement, or refuses or neglects within a reasonable time to comply with any instructions given to him by the Council’s Authorised Representative; or
2. in the event of any substantial change in legal status, or of circumstances occurring which will materially affect the contractual relationship between the parties, or the rights of the Council to sue, or otherwise recover monies due, or enforce any other right arising under this Agreement; or
3. if at any time progress on any part of the Services appears to the Council’s Authorised Representative to be unnecessarily delayed by any cause within the reasonable control of the Consultant and such delay and the cause thereof if capable of remedy will not be remedied within seven days (7) after an instruction in writing requiring the same is given to the Consultant by the Council’s Authorised Representative.
4. if the Consultant through death or incapacity or being a firm owing to its dissolution is unable to provide the Services hereby agreed.
5. if the Consultant refuses or neglects to comply with the Council’s Equal Opportunities Policy or commits any breach of any obligation imposed on it by such Policy or refuses or neglects within a reasonable time to comply with any instructions given to it by the Council in regard to such Policy.
6. if the Consultant fails to maintain its professional indemnity insurance or such insurance becomes unavailable during the provision of the Services.
7. if the Consultant, being an individual or a partnership, has a petition for bankruptcy presented to the courts becomes bankrupt, or makes a composition, or arrangement with his creditors, or has a proposal in respect of himself or his firm for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986 as amended by the Enterprise Act 2002, or where an application for bankruptcy is made against any individual partner of the firm, or where the partnership has a provisional liquidator receiver or manager of its business duly appointed, or where the partnership is dissolved save for the purposes of bona fide reconstruction on terms acceptable to the Council, or where a substantial change in the partners occurs; or
8. if the Consultant, being a company, has a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986, or has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrator, or has a petition for a winding-up

order made or except for the purposes of reconstruction) a resolution for voluntary winding-up passed, or professional liquidator, or a receiver or manager of its business or undertaking duly appointed, or has an administrative receiver, as defined in the Insolvency Act 1986, appointed or possession taken by or on behalf of the holders of any debentures secured by a floating charge or has a lien enforced or arrestment order made against it or served on any of its debtors on behalf of any of its creditors or commits any act of insolvency as defined in the Insolvency Act 1986.

* 1. The Council reserves the right under this Agreement to seek recourse against the Consultant in the event of professional negligence or wilful misconduct in the Consultant's performance of the Services.
  2. In the event of the Council terminating the Agreement in accordance with clause 6) a) the Consultant will be entitled to payment for work completed with a percentage of the fee apportioned in relation to work in progress.

# Conflict of Interest

The Consultant may without the prior written consent of the Council’s Authorised Representative undertake other consultancy assignments which do not conflict with its obligations under this Agreement provided that the Consultant shall give priority to the provision of the Services to the Council over any other business activities undertaken by the Consultant during the course of the Engagement.

# Confidentiality

* 1. The Consultant shall not either during the term of this Agreement or at any time after its termination disclose any Confidential Information to any person not authorised by the Council’s Authorised Representative to receive it and shall not utilise any Confidential Information to the detriment or prejudice of the Council.
  2. All correspondence, documents, data and other property or information coming into the Consultant's possession as a result of its work under this Agreement shall be regarded as the Council’s property. On termination hereof the Consultant shall make arrangements to deliver to the Council’s Authorised Representative all such correspondence, documents, data and other property and information remaining in its possession or under its control as soon as practicable and will certify that all such items have been so delivered and that no such items remain in its possession.
  3. The obligation in sub-clauses 8)a) and b) above shall not apply to:

1. any information in the Consultant's possession which comes into the public domain other than by breach of this Agreement;
2. any information which was in the public domain at the time of the communication to the Consultant; or
3. any information which was in the Consultant's possession, required by law to be disclosed, or known prior to disclosure by the Council.

# Announcements

The Consultant shall not publish any literature, deliver any lecture, or make any communication to the press relating to the business of the Council or on any matter with which the Council may be concerned unless it has previously and on each occasion obtained the prior permission of the Council’s Authorised Representative. The copyright in any publication or report by the Consultant relating to the business of the Council or to any matter with which the Council may be concerned shall belong to the Council absolutely and beneficially, unless otherwise agreed in writing in any particular case.

# Risk and Insurance

* 1. The Consultant shall have personal liability for and shall indemnify the Council for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Consultant or a Substitute engaged by the Consultant of the terms of this agreement including any negligent or reckless act, omission or default in the provision of the Services and shall accordingly maintain in force during the engagement full and comprehensive Insurance policies.
  2. Without prejudice to any other rights or remedies which the Council may possess, the Consultant warrants that it will have and keep in force professional indemnity insurance and public liability insurance and if applicable employer’s liability insurance to cover any claim made against them by the Council in relation to their Services including (but not limited to) any loss arising out of the breach of Clause 3 *Consultant’s Obligations.*
  3. The Consultant shall produce to the Council’s Authorised Representative premium renewal receipts relative to such policies of insurance or other suitable proof of cover upon request.
  4. The insurance required in Clause 10.b will be for a sum of not less than £1,000,000 (one million pounds) in respect of Public Liability insurance, £500,000 professional indemnity.

# Intellectual Property

* 1. If at any time during this Agreement the Consultant shall invent, design, discover or devise either by itself, or by any of its employees or jointly with any employee of or person working for the Council any invention, improvement, discovery or design which results from work carried out by the Consultant pursuant to the Services then all such inventions, improvements, discoveries and designs shall belong to the Council absolutely and beneficially. The Consultant shall communicate to the Council’s Authorised Representative full particulars of any such invention, improvement, discovery or design and the Council’s Authorised Representative will then decide whether and where letters patent or other intellectual property protection shall be applied for either in the name of the Consultant or in the name of the Council or its nominee or in their joint names in accordance with the law and practice applicable thereto and as required by the Council’s Authorised Representative in any case at the Council’s expense.
  2. The Consultant will apply for letters, patent or other intellectual property protection (including but not limited to copyright, trademark or design registration) in respect of any items referred to in sub-clause 11)a) if so requested by the Council’s Authorised Representative and at the expense of the Consultant, in any part of the world both during the term of this Agreement and thereafter, including the execution of all necessary documents to procure the grant of such letters, patent or other protection and the maintenance thereof and, should such letters patent or other protection be granted in the first place in the name of the Consultant, the assignment thereof to the Council absolutely or as the Council’s Authorised Representative may direct.
  3. Upon completion of the Services or termination of the Consultant’s engagement under Clause 6 all of the documents in any way prepared or used by the Consultant in connection with the Services will immediately be delivered to and become the property of the Council in all respects and the Consultant assigns full copyright and future copyright in the such documents to the Council.

# Licences

* 1. The Consultant agrees to arrange on behalf of the Council, licences for use by the Council, at the expense of the Consultant, of any items provided by the Consultant or on its behalf in performance of the Services and which remain the intellectual property of third parties.
  2. The Consultant shall indemnify the Council against all claims and expenses for infringement of any patent, registered design, copyright, trademark, methodologies, computer programs or other intellectual property relating to or arising from the performance of the Services.

# Notices

* 1. Any notice required to be given under this Agreement may be given by being personally delivered at or sent by pre-paid first class post to the address of the relevant party as given in this Agreement or such other address as shall be notified in writing to the other party in accordance with this clause, or by email to the email address provided or by fax if appropriate. In the case of personal delivery, delivery shall be deemed to be the day of such delivery at the offices of the addressee, and in the case of post delivery shall be deemed to have been effected two Working Days after the date of posting. Any notice given by email must be confirmed by letter to the address given in this Agreement.
  2. In proving such service it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post or that the notice was transmitted by fax to the fax number of the relevant party.

# Sub Agreements

The Consultant shall not, without the prior written consent of the Council’s Authorised Representative enter into any sub-agreement for the performance of any part of this Agreement.

# Assignment

The Consultant shall not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder, whether in whole or in part, without the prior written consent of the Council’s Authorised Representative.

# Third Party Rights

Notwithstanding any other provision herein contained, nothing in this Agreement confers or purports to confer any rights to enforce any of its terms pursuant to the Contracts (Rights of Third Parties) Act 1999 on any person who is not a party to this Agreement.

# Tax Requirements

The Consultant shall bear exclusive responsibility for discharging all applicable VAT, income tax and social security contribution liabilities arising out of or incidental to its performance of the Services under this Agreement. In the event that the Council is held liable for any such payments then the Consultant shall compensate the Council in full on demand for any liability which it suffers in connection with them.

# Status of the Consultant

* 1. During the term of this Agreement the Consultant shall be an independent contractor and not the servant of the Council.
  2. In such capacity the Consultant shall bear exclusive responsibility for the payment of his national insurance contributions as a self-employed person and for discharge of any income tax and VAT liability arising out of remuneration for his work performed by him under this Agreement.

# Force Majeure

* 1. Notwithstanding any other provision of these conditions neither party shall be liable for any failure or delay in the performance of this Agreement caused by means beyond their reasonable control including without limitation, strikes (except by the Consultants staff), lock outs, labour

disputes, act of God, war, riot, civil commotion, malicious damage, epidemic or pandemic, compliance with any law or governmental order, rule, regulation or direction or any overriding emergency procedures, fire, flood and storm.

* 1. If the Consultant is unable to perform the Services and obligations under this Agreement as a direct result of a force majeure event, that party shall give to the other written notice of the inability stating the reason in question within two (2) days of the inability arising. The Consultant shall use all reasonable endeavours to mitigate the effect of the force majeure event. The operation of this Agreement shall be suspended during the period (and only during the period) in which the reason continues save in respect of confidentiality. Forthwith upon the reason ceasing to exist the party relying on it shall give written notice to the other of this fact whereupon this Agreement shall continue in operation. If the reason continues for a period of tens (10) days, the party not claiming relief under this clause 19) may terminate this Agreement forthwith upon giving written notice of such termination to the other party.
  2. The Consultant cannot claim relief if the force majeure event is attributable to the Consultant’s wilful act, neglect or failure to take reasonable precautions against the relevant force majeure event. The Consultant cannot claim relief if a force majeure event is one which, in accordance with best industry practice, the Consultant should have foreseen and provided for the cause in question.

# Disputes

* 1. If any dispute arises out of this Agreement which cannot be amicably settled between the parties then the parties may attempt to settle such dispute by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure ("the Model Procedure") as published by CEDR from time to time.
  2. To this end at any time after a dispute has arisen either party may serve upon the other a notice to commence mediation to settle the dispute and on receipt of such notice the other party may within seven days notify CEDR and request that the mediator be appointed.
  3. Any such mediation shall be conducted in accordance with the rules prescribed by CEDR.
  4. The mediation shall be deemed to have commenced on the notification to both parties in writing of the appointment of a mediator by the CEDR and upon written confirmation having been received by the parties of the mediator's acceptance of the appointment.
  5. If at any time after 10 days from the commencement of the mediation no settlement has been achieved or the party on whom notice was served did not notify CEDR within seven days of receipt of notice to request mediation, then either party may refer to the courts for settlement.
  6. Each party to bear its own costs of the mediation.
  7. The payment of fees for the mediation process will be as directed by CEDR.
  8. For the avoidance of doubt, the Consultant shall continue to perform its obligations under this Agreement during any dispute resolutions procedure referred to in this clause and invoked by either party.

# Cost

Each of the parties shall pay any costs and expenses incurred by it in connection with this Agreement.

1. **Variation**

Any amendment to this Agreement shall only be valid if made in writing and signed by the parties hereto.

# Severance

If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the Courts of any jurisdiction to which it is subject such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement.

# Right of Audit

* 1. The Consultant shall at all reasonable times (including following termination for whatsoever reason of this Contract) afford to or procure for any auditor (including any auditor carrying out functions under the Local Audit and Accountability Act 2014) conducting an internal audit or an external audit, inspection or for the Council’s Authorised Representative (or its nominee), internal investigation, ombudsman inquiry or legal enquiry:

1. permission to copy and remove any copies of; and
2. permission to remove the originals of any books, records, information and data in the possession or control of the Consultant which in any way relate to or are or have been used in connection with the performance of the Equipment and the Services including (but without limitation) Council Data and information stored on a computer system operated by the Consultant.
3. any information reasonably requested.
   1. The Consultant shall afford access to audit inspection of the Consultant’s documentation and systems as and when necessary.

# Entire Agreement and Status of the Parties

1. This Agreement embodies the entire understanding of the parties in respect of the matters contained or referred to in it and is the only subsisting Agreement between the Council and the Consultant relating to the Services.
2. There are no promises terms conditions or obligations oral or written express or implied other than those contained in this Agreement.
3. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

# Waiver

The failure of a party hereto to exercise or enforce any right conferred upon it under this Agreement shall not be deemed to be a waiver of any such right or operate so as to bar the enforcement thereof at any time.

# Health and Safety

1. The Consultant shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, (including the Council’s policies where applicable) which may apply to staff and other persons working on the performance of the Agreement. The Consultant shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council on request.
2. Either party shall notify the other as soon as practicable of any health and safety hazards of which it becomes aware.

# Data Protection Act 2018

1. Both parties will observe all their obligations under the UK Data Protection Legislation as set out in Schedule 4 to this Agreement.
2. The provisions of this clause 28 will continue in perpetuity.
3. The Consultant is to ensure that its sub-consultants or consultants are bound by the requirements of this clause 28.

# Ethics and Anti-Corruption

1. The Consultant warrants to the Council that all financial statements and invoices rendered to the Council, under this Agreement, properly reflect the fact that of all activities and transactions made or undertaken by the Consultant in providing the Services may be relied upon as being complete and accurate in any further recording or reporting by the Council.

The Consultant warrants and undertakes to the Council that:

1. It will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and will not give any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972.
2. It will procure that any person who performs or has performed services for or on its behalf (‘Associated Person’) in connection with this Agreement complies with this Clause 29.
3. it will not enter into any agreement with any Associated Person in connection with this Agreement, unless such agreement contains undertakings on the same terms as contained in this Clause 29;
4. it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Agreement;
5. from time to time, at the reasonable request of the Council it will confirm in writing that it has complied with its undertakings under Clauses 29 b) i) – iii) and will provide any information reasonably requested by the Council in support of such compliance;
6. it shall notify the Council as soon as practicable of any breach of any of the undertakings contained within this clause of which it becomes aware.

c) Where the Consultant or Consultant’s employees, servants, sub-Consultants, suppliers or agents or anyone acting on the Consultant’s behalf, engages in conduct prohibited by the Bribery Act 2010 or the Local Government Act 1972 section 117(2) in relation to this or any other Agreement with the Council, the Council has the right to:

1. terminate the Agreement and recover from the Consultant the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Period; or
2. recover in full from the Consultant any other loss sustained by the Council in consequence of any breach of this clause, whether or not the Agreement has been terminated.

# Freedom of Information Act 2000 and Environmental Information Regulations 2004

1. The Consultant acknowledges that the Council is subject to the requirements of the FOIA (Freedom of Information Act 2000) and the EIRs (Environmental Information Regulations 2004 (SI 2004/3391)). The Consultant shall:
2. provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
3. transfer to the Council all Requests for Information (a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs) relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
4. provide the Council with a copy of all Information belonging to the Council requested in the Request For Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
5. not respond directly to a Request For Information unless authorised in writing to do so by the Council.
6. The Consultant acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Consultant. The Council shall take reasonable steps to notify the Consultant of a Request For Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
7. Notwithstanding any other term of this agreement, the Consultant consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.
8. The Council shall, prior to publication, consult with the Consultant on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Consultant shall assist and co-operate with the Council to enable the Council to publish this agreement.

# Equal Opportunities

Without limiting the general obligation set out in this Agreement, the Consultant shall (and shall procure that the Consultant personnel shall):

1. perform its obligations under this agreement (including those in relation to the Services) in accordance with:
2. all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
3. the Council's equality and diversity policy as provided to the Consultant from time to time;
4. any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality law;

b) The Consultant shall respond to any request from the Council for information on approved questions, as that term is defined in the Local Government Act 1988.

# Precedence of contract documents

This Agreement comprises these terms and conditions, the Specification and the Tender. In the event of conflict these documents will be construed in the following order of precedence, the first having the highest precedence:

1. These conditions;
2. The Specification and Tender documents;
3. The Tender response.

# 32) Proper law and Jurisdiction

This Agreement shall be governed by English law and the parties hereby submit to the exclusive jurisdiction of the English Courts for such purpose except for enforcement proceedings where the English courts shall have non-exclusive jurisdiction.

This Agreement has been entered into on the date stated at the beginning of it.

**Signed as a Deed by**

**Insert Name**

**for and on behalf of Ashford Borough Council**

**....................**

**Authorised Officer**

**Signed as a Deed by**

**Insert Name**

**for and on behalf of Ashford Borough Council**

**....................**

**Authorised Officer**

**Consultant**

**Signed for and on behalf of:**

**Insert Company Name**

**Consultant Name:**

**Title:**

**Signed:**

**................................................................................................................**

# Date:

**................................................................................................................**

**Schedule 1 - Services Required:**

# Schedule 2 - Rates and Fees

# Payment

* 1. Stage Payment

The Consultant shall submit to the Council’s Authorised Representative (or such other person as the Council shall reasonably direct from time to time) the Statement ("the Statement") showing:

1. The Consultant's valuation of the work undertaken in respect of each aspect of the Agreement up to the end of that stage/time period, in accordance with clause 2 (b) below;
2. The amounts to which the Consultant considers they are entitled in connection with any variations or instructions for additional services duly authorised by the Council.

# Additions and Deductions

The Council shall have the power to amend any Statement in respect of:

* 1. Such deductions (if any) as the Council shall be entitled to make for the value of any work which the Council considers that the Consultant has failed to carry out or which has been carried out otherwise than to the satisfaction of the Council in accordance with the Agreement;
  2. The variation by addition or deduction of the value of any additional work or omissions which have been duly authorised by the Council.

# Certification and Payment

Within 30 days of the date of delivery to the Council of an acceptable invoice by the Consultant, the Council shall certify and the Council shall pay to the Consultant after any deductions or additions made in accordance with clause 2 hereof, the amount which in the opinion of the Council is due to the Consultant including the sum (if any) to be added or deducted by way of Value Added Tax.

# Interest on Overdue Payments

* 1. In the event of failure by the Council to certify or the Council to make payment, the Council shall pay (save in the event of a dispute) to the Consultant interest on any payment overdue in accordance with the Late Payment of Commercial Debts Regulations 2013 upon which such payment first becomes overdue.
  2. In the event of any variation in the said base rate being announced whilst such payment remains overdue the interest payable to the Consultant for the period that such payment remains overdue shall be correspondingly varied from the date of each such variation.
  3. If the Council shall dispute the sum to be paid then a payment equal to the amount not under dispute shall be paid. No interest will be paid on amounts outstanding due to dispute.

# Schedule 3 - Specification

# Schedule 4– Data Protection

# Definitions

# Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

# Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

1. **Data protection**
   1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
   2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the controller and the Consultant is the processor. Schedule 5 sets out the scope, nature and purpose of processing by the Consultant, the duration of the processing and the types of personal data and categories of data subject.
   3. Without prejudice to the generality of clause 1.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Consultant for the duration and purposes of this agreement.
   4. Without prejudice to the generality of clause 1.1, the Consultant shall, in relation to any personal data processed in connection with the performance by the Consultant of its obligations under this agreement:
      1. process that personal data only on the documented written instructions of the Council unless the Consultant is required by Applicable Laws to otherwise process that personal data. Where the Consultant is relying on the Applicable Laws as the basis for processing personal data, the Consultant shall promptly notify the Council of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Consultant from so notifying the Council;
      2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of

personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);

* + 1. ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
    2. not transfer any personal data outside of the United Kingdom unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

1. the Council or the Consultant has provided appropriate safeguards in relation to the transfer;
2. the data subject has enforceable rights and effective legal remedies;
3. 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; and
4. the Consultant complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the personal data;
   * 1. assist the Council, at the Council's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
     2. notify the Council without undue delay on becoming aware of a personal data breach;
     3. at the written direction of the Council, delete or return personal data and copies thereof to the Council on termination of the agreement unless required by Applicable Law to store the personal data; and
     4. maintain complete and accurate records and information to demonstrate its compliance with this clause 1 and allow for audits by the Council or the Council's designated auditor and immediately inform the Council if, in the opinion of the Consultant, an instruction infringes the Data Protection Legislation; and
     5. indemnify the Council against any loss or damage suffered by the Council in relation to any breach by the Consultant of its obligations under this clause 1.
   1. The Council does not consent to the Consultant appointing any third party processor of personal data under this agreement.
   2. Either party may, at any time on not less than 30 days' notice, revise this clause 1 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

# Schedule 5 - Processing, Personal Data and Data Subjects

1. **Processing by the Consultant**

The Consultant is expected to process a minimal amount of personal data limited only to that required to fulfil the business development subject of this contract.

1. Scope and Purpose of processing

The processing of personal data in so much as it is necessary for the business development subject of this contract, this may include personal information processed whilst migrating data or assessing data records.

1. Nature

The nature of the processing could be any operation such as collecting, recording, structuring, storing, alternating, retrieving, consulting, using, disclosing by transmission, disseminating or otherwise making available, combining, restricting, or the destruction of personal data in connection with the business development subject of this contract.

1. Duration of the processing

For the term of this agreement and or associated data retention periods.

1. **Types of personal data**

Names, addresses, telephone numbers, email addresses, images and video footage, sensitive documents.

1. **Categories of data subject**

Members of the public, agents, developers.