# Appendix 1A

# Additional specification requirements

**For the building works to No 57, No 67, No 69 and No 73 High Street, Weston, for LUF town centre projects.**

# Requirements

R1: **Blacklisting**

1. Without prejudice to any other right or remedy it may possess, the Employer may terminate the Consultant’s employment under this Contract by written notice with immediate effect if on or after the commencement of the Works there is any finding, by a court, tribunal or other public body exercising similar functions, against the Consultant regarding the use or compilation of a Blacklist by or on behalf of the Consultant, except in situations where the finding exclusively relates to activity that took place before the commencement of the Works and the Consultant can demonstrate to the Employer’s reasonable satisfaction that at and from the commencement of the Works Blacklists have no longer been used or compiled by or on behalf of the Consultant.
2. For the purposes of Article 10 “Blacklist” shall mean a list which:
3. contains details of persons who: (i) are or have been members of trade unions or persons who are taking part or have taken part in the activities of trade unions, and/or (ii) have incurred disapproval or suspicion or are to be boycotted or otherwise penalised; and
4. is compiled with the view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or treatment of workers.

R2: **Environmental Audit**

1. The Employer wishes to demonstrate its commitment to improving the environment. The Employer has developed an environmental policy and is actively implementing its aims.  The Employer will use its position as an enabler and specifying client to further this commitment through this Contract. The Consultant shall be expected to share this commitment and work towards environmental improvement wherever possible when carrying out the Works. The Consultant will be encouraged to promote any policies that it considers are consistent with the Employer’s commitment to improve the environment and go beyond the specified requirements.
2. The Consultant shall assist the Employer’s implementation of the European Eco- Management and Audit Scheme (EMAS).

1. The Consultant may be required to provide data from time to time, to enable the Employer to compile an environmental statement. The Consultant may be required to periodically provide data relating to materials/chemicals used, fuel, waste and environmental impact.

R3: **Agency**

1. Neither the Consultant nor its employees shall in any circumstances hold themselves as being the servant, or agent of the Employer, other than in circumstances expressly permitted by this Agreement and the Conditions.
2. Neither the Consultant nor its employees shall in any circumstances hold themselves as being authorised to enter into any contract on behalf of the Employer, or in any other way to bind the Employer to the performance variation, release or discharge of any obligation.
3. Neither the Consultant nor its employees shall in any circumstances hold themselves as having the power to make, vary, discharge or waive any byelaw or regulation of any kind.

R4: **Data Protection**

1. Data Protection Legislation: (i) unless and until the General Data Protection Regulation (GDPR) is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998

1. The parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the data controller and the Consultant is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). Annex 1 sets out the scope, nature and purpose of processing by the Consultant, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, Personal Data) and categories of Data Subject
2. Without prejudice to the generality of R4, the Employer 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.
3. Without prejudice to the generality of R4, the Consultant shall, in relation to any Personal Data processed in connection with the performance by the Consultant of its obligation under this Agreement:

a.        process that Personal Data only on the written instructions of the Employer unless the Consultant is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Consultant to process Personal Data (Applicable Laws). Where the Consultant is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Consultant shall promptly notify the Employer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Consultant from so notifying the Employer;

b.       ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Employer, 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);

c.        ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

d.       not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Employer has been obtained and the following conditions are fulfilled:

* the Employer or the Consultant has provided appropriate safeguards in relation to the transfer;
* 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; and
* the Consultant complies with reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data;

e.        assist the Employer, at the Employer'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;

f.          notify the Employer without undue delay on becoming aware of a Personal Data breach;

g.        at the written direction of the Employer, delete or return Personal Data and copies thereof to the Employer on termination of the Agreement unless required by Applicable Law to store the Personal Data; and

h.        maintain complete and accurate records and information to demonstrate its compliance with this clause R4 and allow for audits by the Employer or the Employer’s designated auditor.

1. The Employer does not consent to the Consultant appointing any third-party processor of Personal Data under this Agreement.
2. The Employer may, at any time on not less than 30 days’ notice, revise this clause R4 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 replaced by attachment to this Agreement).

R5: **Anti-bribery**

1. In this clause:

**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;

**Consultant Party**: means the Consultant’s agents and Consultants, including each sub-Consultant;

**Consultant Personnel**: means all employees, agents, consultants and Consultants of the Consultant or of any sub-Consultant; and

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

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

* induce that person to perform improperly a relevant function or activity; or
* reward that person for improper performance of a relevant function or activity;

or

* 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;

committing any offence:

* under the Bribery Act;
* under legislation creating offences concerning fraudulent acts;
* at common law concerning fraudulent acts relating to this contract or any other contract with the Employer; or
* defrauding, attempting to defraud or conspiring to defraud the Employer.

1. The Consultant:

a.        will not, and will procure that the Consultant Party and the Consultant Personnel will not, in connection with this Contract commit a Prohibited Act;

b.       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 Employer, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Employer before execution of this Agreement.

1. The Consultant shall, if requested, provide the Employer with any reasonable assistance, at the Employer’s reasonable cost, to enable the Employer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
2. If any breach of Article 13(ii) is suspected or known, the Consultant must notify the Employer immediately.  If the Consultant notifies the Employer that it suspects or knows that there may be a breach of Article 13(ii), the Consultant must respond promptly to the Employer‘s enquiries, co-operate with any investigation, and allow the Employer to audit books, records and any other relevant documentation. This obligation shall continue for 12 years following the expiry or termination of this Agreement.

1. The Employer may terminate the Consultant’s employment under this Contract by written notice with immediate effect if the Consultant is in breach of its obligations under this clause R5.

R6: **Freedom of Information**

1. The Consultant acknowledges that the Employer is subject to the requirements of the FOIA and the Environmental Information Regulations. The Consultant cooperates with and assists the Employer so as to enable the Employer to comply with its information disclosure obligations.

1. In this clause:

“**Environmental Information Regulations**” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations;

“**FOIA**” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

“**Information**” has the meaning given under section 84 of the Freedom of Information Act 2000; and

“**Request for Information**” means a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the Environmental Information Regulations.

1. The Consultant:

a.        transfers to the Employer all Requests for Information that it receives as soon as practicable and in any event within two working days of receiving a Request for Information;

b.       provides the Employer with a copy of all Information in its possession or power in the form that the Employer requires within five working days (or such other period as the Employer may specify) of the Employer’s request;

c.        provides all necessary assistance as reasonably requested by the Employer to enable the Employer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and

d.       procures that its sub-Consultants do likewise.

1. The Employer is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
2. The Consultant does not respond directly to a Request for Information unless authorised to do so by the Employer.

1. The Consultant acknowledges that the Employer may, acting in accordance with the Department of Constitutional Affairs’ Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the Consultant or despite the Consultant having expressed negative views when consulted.
2. The Consultant ensures that all Information is retained for disclosure throughout the period for retention and permits the Employer to inspect such records as and when reasonably requested from time to time.

R7: **Audit**

1. The Consultant will keep and maintain until twelve (12) years after the date of this Agreement, or as long a period as may be agreed between the parties, full and accurate records of the Agreement including:

a.        the goods, works and services provided under it;

b.       all expenditure reimbursed by the Employer; and

c.        all payments made by the Employer.

1. The Consultant will on request afford the Employer or the Employer’s representatives access to such records as may be required in connection with this Agreement.

R8: **Equal Opportunities**

1. The Consultant hereby agrees to comply with the Equalities Act 2010 and shall not practice any form of discrimination on the grounds of colour, race, ethnic or national origins.
2. The Consultant shall demonstrate to the Employer that it has a policy to comply with its statutory obligations under all legislation relating to discrimination and equalities and, accordingly, will not treat any individual or group of people less favourably than others because of their age, any disability, gender (including transgender issues), sexual orientation, race, (including nationality, cultural or ethnic background) religion or belief in relation to decisions to recruit, train or promote its employees.

1. If there should be any findings of unlawful discrimination made against the Consultant by any court or industrial tribunal, or an adverse finding in any formal investigation by any Equalities Commission, the Consultant shall take appropriate steps to prevent repetition of the unlawful discrimination. The Consultant shall also notify the Employer immediately in writing as soon as it becomes aware of any investigation or proceedings brought against the Consultant under any equalities legislation and keep the Employer informed of the details of any such investigation or proceedings as they develop.

1. The Consultant shall on request provide the Employer with details of any steps taken under Article 17(iii).

1. The Consultant shall observe as far as possible any relevant code of practice issued by any Equalities Commission from time to time and provide the Employer with such information as it may reasonably require to assess the Consultant’s compliance with such Code.

1. The Employer as a local authority is under the following additional duties in carrying out its functions. When carrying out the Works and other activities under this Contract the Consultant shall co-operate with the Employer in any way the Employer may require to enable the Employer to fulfil its duties under any relevant legislation.

1. The Consultant shall provide to the Employer, on request, statistics relating to the composition of its workforce.
2. The Consultant shall ensure that any sub-Consultant it appoints complies with this clause.

R9: **Whistleblowing**

1. For the avoidance of doubt in this clause R9 “malpractice” includes, but is not limited to, any

* fraud,
* financial irregularity,
* corruption,
* criminal offence,
* failure to comply with any legal or regulatory duty,
* endangering the health or safety of an individual,
* endangering the environment,
* serious misconduct, or
* serious financial maladministration.

1. The Consultant will notify the Employer immediately of any act or omission made by the Employer’s employees, members, agents or sub-consultants that the Consultant is aware is either fraudulent, dishonest, ultra vires, an abuse of process, maladministration, negligent or otherwise contrary to the principles of good governance.
2. The Consultant will comply with Public Interest Disclosure Act 1998 and will put in place (and update from time to time) a whistleblowing procedure for its personnel.  Such procedure will encourage the Consultant’s personnel to report to the Consultant incidents of malpractice with the Consultant’s, or the Employer’s, organisations.  The procedure will be similar in all material respects to the Employer’s whistleblowing procedure.
3. The Consultant will notify the Employer in writing if any of its personnel invoke the whistleblowing procedure.  The Consultant shall set out details of the alleged malpractice in such notification.  Without prejudice to any other rights the Employer has under this contract, the Consultant will comply with the Employer’s reasonable instructions regarding the alleged malpractice, where such malpractice affects the Employer.

R10: **Change of control**

1. If there is a change of control of the Consultant within the meaning of section 1124 of the Corporation Tax Act 2010 the Employer will be entitled to terminate the Consultant’s employment under this contract.
2. Notwithstanding the Employer’s right to terminate this contract under clause R10 if there is a change of control, the Employer at its sole discretion may agree to such change of control subject to the delivery of a Parent Company Guarantee from the ultimate parent company of the replacement company in a form acceptable to the Employer.
3. The Consultant will give written notice to the Employer of such a change of control.

11: **Compliance with Anti-Slavery and Human Trafficking Laws and Policies**

1. In performing its obligations under the agreement, the Consultant shall:

1. 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; and

2.  have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance; and

3. not engage in any activity, practice or conduct that would constitute an offence under sections 1,2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and require that any sub-contractors and suppliers shall comply with all applicable anti-slavery and human trafficking laws, statures, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.