



## South Somerset District Council

The Council Offices, Brympton Way, Yeovil, Somerset, BA20 2HT  
Telephone: (01935) 462462 Fax: (01935) 462188  
Website: [www.southsomerset.gov.uk](http://www.southsomerset.gov.uk)

## Appendix 2

**A letter of appointment will include the pricing and any specific work instructions, reporting and contract management arrangements agreed with the successful Supplier.**

### Conditions of Engagement

The following Conditions of Engagement apply to all work carried out by consultants.

#### 1. Definitions

The “**Council**” is **South Somerset District Council of Council** Offices, Brympton Way, Yeovil, BA20 2HT and is the Client under these Conditions.

The “**Supplier**” is the consultant appointed namely XXXXXX.

The “**Services**” means the services as set out in the Supplier Proposal in response to South Somerset District Council’s RFQ dated 25 May 2022 (ProContract reference DN614362), and agreed as the scope of the work required under the terms of this contract and as ordered by issuing of the Purchase Order by the Council.

The Supplier’s Proposal, these Conditions of Engagement and written acceptance of the Letter of Engagement from the Council shall together constitute the contract between the parties hereto (“**the Agreement**”).

#### 2. General Terms

The Supplier shall exercise reasonable skill and care in the performance of the Services.

Where applicable all work and services shall comply with British Standards or equivalent and industry standards including Codes of Practice.

The effective date of the Agreement shall be the date of the written acceptance of the Letter of Engagement from the Council. For the avoidance of doubt written acceptance may take the form of letter or e-mail together with official order number.

These Conditions of Engagement shall be governed by and construed in all respects in accordance with the laws of England.

**If you need this information in large print, Braille, audio or another language, please contact me at the above address**

In this Agreement (including the recitals) unless the context otherwise requires: clause headings are for ease of reference only; references to clauses are to clauses and schedules in these conditions; the singular includes the plural and vice-versa and any of the genders includes the other; any reference to a person includes a Supplier, corporation, partnership of unincorporated association; reference to a party includes its successors in title, transferees and assignees; references to any statute includes any statutory modification, extension or re-enactment of it or any part of it for the time being in force and also includes all instruments and regulations deriving validity from that statute.

### **3. Payment**

Invoices will be rendered monthly or on completion of each stage of work unless otherwise agreed.

VAT will be applied at the standard rate on all invoices rendered.

Payment is due on date of invoice and undisputed accounts should be settled in full within 28 days of the date of receipt of the invoice by the Council.

Where payment is unduly delayed the Supplier reserves the right to charge interest on overdue invoices rendered at 2% above the Bank of England base rate, and compensation, in accordance with the Late Payment of Commercial Debts (interest) Act 1998 as amended by the late Payment of Commercial Debts Regulations 2002.

### **4. Health & Safety**

The Supplier shall be responsible for complying with all relevant health & safety legislation including codes of practice, industry good practice, guidance etc in carrying out the services (and works as required) under this Agreement.

This will be evidenced (in part) by producing and sharing risk assessments and method statements as reasonably requested as appropriate by the Council.

### **5. Insurance & Liability**

#### **5.1 Public and Employer's Liability Insurance**

The Supplier shall maintain a comprehensive policy of public liability and employer's liability insurance.

In respect of its Public Liability such insurance cover to be maintained and provide for a minimum of £5,000,000 (five million pounds sterling).

In respect of its Employer's liability such insurance cover to be maintained and provide for a minimum of £10,000,000 (ten million pounds sterling).

#### **5.2 Professional Indemnity Insurance**

The Supplier shall maintain professional indemnity insurance from the commencement of the Services until five years from the date of completion of the Services in an amount of £2 million provided always that such insurance is available at commercially reasonable rates and subject to all exceptions, exclusions and limitations to the scope of cover that are commonly included in such insurance at the time the insurance is taken out or renewed as the case may be.

No actions or proceedings under or in respect of these Conditions of Engagement whether in contract or in tort in negligence or for breach of statutory duty or otherwise shall be commenced against the Supplier after the expiry of 5 years following completion of the services or such earlier date that may be prescribed by law.

Further and notwithstanding anything to the contrary contained in these Conditions of Engagement and without prejudice to any provision in the Conditions of Engagement whereby liability is excluded or limited to a lesser amount, the liability of the Supplier under or in connection with these Conditions of Engagement whether in contract or in tort, in negligence, for breach of statutory duty or otherwise for any claim shall not exceed the amount, if any, recoverable by the Supplier by way of indemnity against the claim in question under professional indemnity insurance taken out by the Supplier and in force at the time that the claims or (if earlier) circumstances that may give rise to the claim is or are reported to the insurers in question. The limitation shall not apply if no such amount is recoverable due to the Supplier having been in breach of his obligation under this clause or the terms of any insurance maintained in accordance therewith or having failed to report any such claim or circumstances to the Insurers in question timeously.

Nothing in these Conditions of Engagement confers or purports to confer to any third party any benefit or any right to enforce any term of this Agreement.

### **5.3 Limitation of Liability**

Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Supplier to the Council in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to £2,000,000 (two million pound sterling) for any one claim unless specifically agreed to be otherwise as stated in the Council's Brief, Fee Proposal or Purchase Order

### **5.4 Liability of the Council**

The Council shall be liable to the Supplier for any loss or damage to the Supplier's property which is caused by negligence or wilful tortuous act of the Council or its servants during the course of their employment but not in any other way whatsoever and the Council shall in no circumstances be liable to the Supplier for any economical or financial loss of any kind whatsoever which the Supplier sustains (other than the non-payment of sums which are or ought to have been certified as due to the Supplier under the contract) in consequence of any breach of contract or tort committed by the Council which was unintentional and did not arise from any failure by the Council or its servants to exercise reasonable care.

In the absence of fraud the Council does not warrant the accuracy of any representation or statement which may have been made or any information or advice which may have been given to the Supplier during the negotiations antecedent to this Agreement by the Council, its servants or agents, whether in relation to fact or law, and the Council shall not be liable to the Supplier for any loss or damage which the Supplier may sustain as a result of relying on any such representation, statement, information or advice, whether in contract, tort, under the Misrepresentation Act 1967 or otherwise, save insofar as the relevant statement, representation, information or advice was made or given fraudulently by the Council or its servants or agents acting in the course of their employment.

## **6. Copyright**

All intellectual property rights including design rights and copyright in any documents or drawings of whatever nature produced by the Supplier under the Agreement shall remain vested in the Supplier but the Supplier grants to the Council a royalty free irrevocable non terminable license to use and reproduce the same for any purpose whatsoever connected with the property to which this report relates. The Supplier agrees that it will not pass on or use the information supplied by the Council or gathered under this Agreement or any other agreement related to this property for any purpose other than as is necessary for properly complying with the Supplier's obligations under this Agreement. All information so supplied or gathered under this Agreement shall remain the property of the Council and shall be returned or destroyed as appropriate and as advised by the Council on termination of this Agreement. In the event of non-payment of fees due under the agreement the Supplier will be entitled to revoke the license granted by this clause. The Supplier shall not be liable for the use by any third party under the license granted by this clause of such documents or drawings for any purpose other than that for which the same were prepared by or on behalf of the Supplier.

Neither the Council nor the Supplier shall without the consent in writing of the other party to the Agreement assign the benefit or in any way transfer the obligations of the Agreement or any part thereof. The number of assignments by either party to the Agreement shall be limited to one occasion only unless otherwise agreed.

## **7. Confidentiality and Data Protection**

The Supplier shall not use or divulge or communicate to any person (other than those whose province it is to know the same or with the authority of the Council) any confidential information concerning the staff, business, accounts, finance, or contractual arrangements or other dealings computer systems, substances of reports, products, recommendations, transactions or affairs of the Council which may come into the Supplier's knowledge.

The Supplier shall treat the Agreement and everything within it as confidential and shall not give any information regarding the Agreement to any member of the Press or General Public.

The Supplier shall ensure that its employees, agents, and sub-contractors are aware of and comply with the confidentiality and non-disclosure provisions contained within this Clause and the Supplier shall indemnify the Council against any loss or damage whatsoever which the Council may sustain or incur as a result of any breach of confidence by any such persons.

The Supplier shall (and shall procure that its employees, agents, and sub-contractors shall) comply with any requirements under the Data Protection Act 2018 and will duly observe all its obligations under the aforementioned Act which arise in connection with performance of this Agreement.

The provisions of this clause shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

## **8. Delay**

The Council shall supply the Supplier without charge and within reasonable time pertinent data and information and give such assistance and make such decisions as shall reasonably be required for the carrying out by the Supplier of the Services and the Supplier and the Council shall exercise all reasonable expedition and despatch in carrying out the provisions of the Agreement.

If any work is carried out or additional costs incurred by the Supplier because of any variation to the Services, project, works or brief by the Council or because of delay by the Council or if the Supplier is delayed by others or by particular events that were not reasonably foreseeable or because the project or works are damaged or destroyed or because of other reasons beyond the control of the Supplier, the Supplier shall be entitled to additional payment as agreed by the Council.

## **9. Termination**

### **9.1 General**

Either party may terminate this Agreement forthwith by notice in writing to the other if:

- a) the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied fails to remedy within 14 calendar days of being given notice in writing setting out the breach and indicating that failure to remedy the breach may result in termination of this Agreement;
- b) the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;
- c) the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- d) the other party ceases to carry on its business or substantially the whole of its business;

or

- e) the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

## **9.2 Consequences of Termination**

If the Supplier's engagement is terminated as provided herein the Council shall:

- a) cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from arising out of the termination of the Supplier's employment shall have been calculated and provided such calculation shows a sum or sums due to the Supplier;
- b) be entitled to employ and pay other persons to provide and to complete the work required under the Agreement.
- c) be entitled to deduct from any sum or sums which would have been due from the Council to the Supplier under this Agreement or any other agreement or be entitled to recover the same from the Supplier as a debt any loss or damage to the Council resulting from or arising out of the termination of the Supplier's engagement. Such loss or damage shall include the reasonable costs to the Council of the time spent by its officers in terminating the Supplier's engagement and in making alternative arrangements for the completion of the works required under the Agreement;
- d) when the total costs loss and/or damage resulting from or arising out of the termination of the Supplier's engagement have been calculated and deducted so far as practicable from any sum or sums which would have been to the Supplier be entitled to recover any balance shown as due to the Council as a debt or alternatively the Council shall pay to the Supplier any balance shown as due to the Supplier;

## **9.3 Termination on Account of Corruption**

The Council shall be entitled to cancel the Agreement and to recover from the Supplier the amount of any loss resulting from such termination if the Supplier shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or the execution of the Agreement or any other agreement with the Council or for showing of forbearing to show favour or disfavour to any person in relation to the agreement or any other agreement with the Council or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Supplier) or if in relation to any agreement with the Council the Supplier or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or any amendment of them or shall have given any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972.

## **10. Notices**

Unless otherwise communicated to the party in writing any notice to be given by either party to the other may be served by e-mail, fax, personal service or by post to the address of the other party that is the registered office or main place of business of the Supplier or if the Council, South Somerset District Council, The Council Offices, Brympton Way, Yeovil Somerset BA20 2HT.

A notice sent by e-mail shall be deemed to be received providing receipt is acknowledged and confirmed. Notice given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by second class post shall be deemed to have been delivered in the ordinary course of post and if by first class post shall be deemed to have been delivered 48 hours after posting and acknowledged.

Any notice in writing under the Agreement shall be deemed to be duly given if it is delivered by hand against a signed receipt, by special postal delivery, by recorded postal delivery or by courier. For the avoidance of doubt notices sent by ordinary first or second class post or by e-mail (even with read receipt notice) shall be deemed not to have been duly given unless acknowledged in writing by a Director of the Supplier.

## **11. Severability**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid, illegal or unenforceable provision eliminated.

## **12. Waiver**

The failure by either party to enforce at any time or for any period any one or more of these Conditions of Engagement herein shall not be a waiver of them or of the right at any time subsequently to enforce all the terms and conditions of this Agreement.

## **13. Ethical Standards**

The Supplier must promote equality, treat others with respect and not do anything which compromises the impartiality of those who work for the Supplier.

The Supplier, and any of the Supplier's employees or sub-contractors, must not conduct themselves in a manner, which could bring this Council into disrepute.

The Council is an equal opportunities employer and is committed to promoting equality of opportunity for all people irrespective of sex, age, race or disability. The Supplier has been required to provide evidence that they have equal opportunities policies in place and are committed to them. Any failure to comply with the principles set out in those policies shall amount to a material breach of contract.

The Council is committed to using the resources entrusted to it to ensure best value for money at the least possible cost to the environment by:

- a) Specifying less environmentally damaging products.
- b) Promoting greater use of renewable sources.
- c) The use of environmentally friendly practices in the delivery of the Services.

The Supplier shall provide on request evidence of its practices and procedures as they relate to the protection of the environment and shall comply with any reasonable requests from the Council in relation thereto.

#### **14. Force Majeure**

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including, but not limited to acts of God, strikes, lockouts, accidents, war, fire the act or omission of Government, highway authority or any telecommunication carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production or supply by third parties of equipment or services, and the parties shall be entitled to a reasonable extension of obligations after notifying the other party of the nature and extent of such events.

#### **15. Arbitration**

Save in respect of Termination pursuant to Clause 9 (in respect of which the rights of the Council shall be absolute) or any other condition where the discretion of the Council is stated to be absolute any dispute or difference which may arise between the Council and the Consultant in connection with or arising out of the Contract may, by agreement of both parties, be resolved by arbitration, in which event such dispute or difference shall be referred to a single arbitrator to be agreed between the Council and the Consultant or failing such agreement within fourteen (14) days to be nominated by the President for the time being of the British Chartered Institute of Arbitrators in accordance with the Arbitration Act 1996 or any statutory modifications or re-enactment of it.

#### **16. Data Processing**

Both parties will comply with all applicable requirements of current Data Protection Legislation for the duration and purposes of this Agreement. In the event that there is a requirement for the Supplier to process Personal Data on behalf of the Council, the Supplier acknowledges that it will be required to enter in to a separate Data Sharing Agreement with the Council for this purpose.



## CONTRACT PARTICULARS

- 1 Commencement Date shall be the date of the written acceptance of the Letter of Engagement from the Council.
- 2 The contract will expire once the Supplier has delivered the services set out in their Proposa, unless agreed otherwise by the Authority.
- 3 The Authority's Contract Representative: **Katherine Hoskins – Arts Engagement & Outreach Officer**
- 4 The Supplier's Contract Representative: **TBC**