



DATED

2021

between

LEICESTER CITY COUNCIL

and

[name of provider]

DRAFT TERMS AND CONDITIONS. THE COUNCIL RESERVES THE RIGHT TO FINE TUNE THIS AGREEMENT AND THE ATTACHED SCHEDULES (TO REFLECT ALL CLARIFICATIONS AGREED DURING THE TENDER PROCESS) BEFORE CONTRACT AWARD PROVIDING THAT SUCH FINE TUNING DOES NOT AMOUNT TO A MATERIAL CHANGE AND DOES NOT BREACH THE PUBLIC CONTRACT REGULATIONS 2015 (as may be amended)

Ref:

Legal Services
Leicester City Council
4th Floor, Rutland Wing
City Hall
115 Charles Street
Leicester
LE1 1FZ

CONTENTS

CLAUSE

1	Interpretation	1
2	Term of engagement	4
3	Duties	4
4	Fees	6
5	Expenses	6
6	Other activities	6
7	Confidential Information and council property	6
8	Data protection	7
9	Intellectual property	11
10	Insurance and liability	12
11	Termination	14
12	Obligations on termination	14
13	Status	15
14	Notices	15
15	Entire agreement	16
16	Variation	16
17	Counterparts	16
18	Third party rights	16
19	Governing law and jurisdiction	16
20	Dispute resolution	17
21	Survival	17
22	Freedom of Information	17

SCHEDULE

SCHEDULE 1 – SERVICES	21
SCHEDULE 2 – COUNCIL POLICIES	22
SCHEDULE 3 – CONSULTANT'S SUBMISSION	26
SCHEDULE 4 – FEES	27
SCHEDULE 5 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS	28

THIS AGREEMENT is entered in on the

2021

PARTIES

- (1) **LEICESTER CITY COUNCIL** whose administrative headquarters are at City Hall, 115 Charles Street, Leicester, LE1 1FZ (**the Council**).
- (2) [provider] incorporated and registered in England and Wales with company number []whose registered office is at [] (**the Consultant**).

BACKGROUND

The Council requires consultancy Services for xxxxx

- A. [add more information here]
- B. The Council is commissioning the Consultant to provide the Services.
- C. The Consultant hereby agrees to provide the Services in accordance with the terms and conditions of this Agreement, including Schedules hereunder.

The Parties hereby agree as follows: -

AGREED TERMS

1 INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement (unless the context requires otherwise).

Agreement: this contract.

Council Property: all documents, books, manuals, materials, records, correspondence, papers and Information (on whatever media and wherever located) relating to the Business or affairs of the Council or its customers and business contacts, and any equipment, keys, hardware or software provided for the Consultant's use by the Council during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Consultant on the computer systems or other electronic equipment of the Council, the Consultant during the Engagement.

Commencement Date:

Confidential Information: Information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of the Council for the time being confidential to the Council and trade secrets including, without limitation, technical data and Know-How relating to the Council or any of its suppliers, customers, agents, distributors, shareholders, management or business contacts, including in particular (by way of illustration only and without limitation) and including (but not limited to) Information that the Consultant creates, develops, receives

or obtains in connection with this Engagement, whether or not such Information (if in anything other than oral form) is marked confidential.

Contractor Personnel: means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement.

Data Processor: shall have the same meaning as set out in the Data Protection Legislation.

Data Protection Legislation: (i) the GDPR, 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.

DPA 2018: Data Protection Act 2018.

Engagement: the engagement of the Consultant by the Council on the terms of this Agreement.

EIR: The Environmental Information Regulations 2004 and any subordinate legislation made from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Fees: The sums detailed in and payable in accordance with Schedule 4.

FOIA: The Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

GDPR: the General Data Protection Regulation (*Regulation (EU) 2016/679*).

Information: has the meaning given under Section 84 of FOIA.

Insurance Policies: employer's liability insurance cover, professional indemnity insurance cover, and public liability insurance cover.

Intellectual Property Rights: patents, rights to Inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential Information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

Invention: any invention, idea, discovery, development, improvement or innovation made by the Consultant in connection with the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

Know-How: Information, data, Know-How or experience whether patentable or not and including but not limited to any technical and commercial Information relating to Project, design, development, manufacture, use or sale.

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply.

LED: Law Enforcement Directive (*Directive (EU) 2016/680*).

Party: a Party to this Agreement.

Personal Data: has the meaning set out in section 1(1) of the Data Protection Legislation and relates only to personal data, or any part of such personal data, of which the Council is the Data Controller and in relation to which the Consultant is providing services under this Agreement.

Processing and process: have the meaning set out in section 1(1) of the Data Protection Legislation.

Pre-Contractual Statement: any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the Engagement other than as expressly set out in this Agreement or any documents referred to in it.

Request for Information: a request for Information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

Services: the services described in Schedule 1 (Services).

Termination Date: the date of expiry or termination of this Agreement, howsoever arising.

Works: all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software programs, inventions, ideas, discoveries, developments, improvements or innovations and all materials embodying them in whatever form, including but not limited to hard copy and electronic form, prepared by the Consultant in connection with the provision of the Services.

Working Day: means days when the Bank of England is open to the general public for business between 9 am and 5pm Mondays to Fridays.

- 1.2 The headings in this Agreement are inserted for convenience only and shall not affect its construction.

- 1.3 Reference to schedule(s) and clauses shall mean the Schedule(s) and Clause(s) in this Agreement.
- 1.4 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.7 The Schedules to this Agreement form part of (and is incorporated into) this Agreement.
- 1.8 In the event of any conflict between the terms and conditions hereunder and the schedules hereunder, the terms and conditions shall take precedence.
- 1.9 In the event of any conflict between the Schedules, Schedule 1 (Services) shall take precedence.

2 **TERM OF ENGAGEMENT**

- 2.1 The Council shall engage the Consultant to provide the Services on the terms of this Agreement.
- 2.2 The Engagement shall commence on the Commencement Date and shall continue until [add end date here] (Initial Term)
- 2.3 The Council may extend this Agreement beyond the Initial Term by a further period of [xxx] (Extension Period). If the Council wishes to extend the Agreement, it shall give the Consultant at least [x] months written notice of such intention before the expiry of the Initial Term..
- 2.4 If the Parties do not wish to extend this Agreement beyond the Initial Term this Agreement shall terminate upon the expiry of the Initial Term.

3 **DUTIES**

- 3.1 During the Engagement the Consultant shall:
 - 3.2 provide the Services with all due care, skill and ability and use its or his best endeavours to promote the interests of the Council;
 - 3.3 provide the Services in accordance with the Council's policies set out in Schedule 2.
 - 3.4 provide the Services in accordance with their submission as set out in Schedule 3.
 - 3.5 promptly give to the Council all such Information and reports as it may reasonably require in connection with matters relating to the provision of the Services.

- 3.6 If the Consultant is unable to provide the Services due to illness or injury, the Consultant shall advise the Council of that fact as soon as reasonably practicable. The Consultant shall use its reasonable endeavours to ensure that the Consultant is available at all times on reasonable notice to provide such assistance or Information as the Council may require.
- 3.7 Unless expressly authorised by the Council in writing the Consultant shall not hold itself out as having authority to bind the Council.
- 3.8 The Consultant shall, comply with all reasonable standards of safety and comply with the Council's health and safety procedures from time to time in force at the premises where the Services are provided and report to the Council any unsafe working conditions or practices.
- 3.9 The Consultant shall:
- 3.8.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- 3.8.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 3.8.3 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
- 3.8.4 immediately notify the Council if a foreign public official becomes an officer or employee of the Consultant or acquires a direct or indirect interest in the Consultant (and the Consultant warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement);
- 3.8.5 ensure that all persons associated with the Consultant or other persons who are performing services in connection with this Agreement comply with this Clause 3.10.
- 3.10 Breach of Clause 3.10 shall be deemed a material breach of this Agreement.
- 3.11 For the purpose of Clause 3.10, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6(5) and (6) of that Act and section 8 of that Act respectively.
- 3.12 The Consultant shall obtain the prior written approval of the Council before appointing a Sub-Contractor.
- 3.13 In the event of appointment of a Sub-Contractor in accordance with Clause 3.13, hereinabove, the Consultant shall not be entitled to charge any additional sum over and above the actual Fees payable by the Council.

3.14 The Consultant shall process Personal Data in accordance with Clause 8 and Schedule 5 (Processing, Personal Data and Data Subjects).

4 FEES

4.1 Provided there is no dispute, in consideration of the provision of the Services, the Council shall pay the Consultant in accordance with Schedule 4 (Fees),

4.2 The Council shall be entitled to deduct from the Fees (and any other sums) due to the Consultant any sums that the Consultant may owe to the Council at any time.

4.3 Payment in full or in part of the Fees claimed under Clause 4 shall be without prejudice to any claims or rights of the Council against the Consultant in respect of the provision of the Services.

4.4 For the avoidance of doubt, where VAT applies to this Agreement no payments shall be made until a valid VAT invoice is received by the Council for each payment that is due.

5 EXPENSES

5.1 The Council will not pay the Consultant any expenses in relation to this Agreement.

6 OTHER ACTIVITIES

6.1 Nothing in this Agreement shall prevent the Consultant from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the Engagement provided that:

6.1.1 such activity does not cause a breach of any of the Consultant's obligations under this agreement;

6.1.2 the Consultant shall give priority to the provision of the Services to the Council over any other business activities undertaken by it during the course of the Engagement.

7 CONFIDENTIAL INFORMATION AND COUNCIL PROPERTY

7.1 The Consultant acknowledges that in the course of the Engagement it will have access to Confidential Information. The Consultant has therefore agreed to accept the restrictions in this Clause 7 (Confidentiality).

7.2 Subject to Clause 7.3, the parties shall, keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

7.3 Clause 7.2 shall not apply to any disclosure of Information:

7.3.1 required by any applicable law, provided that Clause 22 (Freedom of Information) shall apply to any disclosures required under the FOIA or the Environmental Information Regulations;

- 7.3.2 that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Agreement;
- 7.3.3 where a party can demonstrate that such that such Information is already generally available and in the public domain otherwise than as a result of a breach of Clause 7.2;
- 7.3.4 by the Council of any document to which it is a party and which the parties to this Agreement have agreed contains no commercially sensitive Information;
- 7.3.5 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 7.3.6 by the Council to any other department, office or agency of the Government; or
- 7.3.7 by the Council relating to this Agreement and in respect of which the Consultant has given its prior written consent to disclosure.
- 7.4 On or before the Termination Date the Consultant shall ensure that all documents and/or records in its possession, custody or control which relate to personal Information of the Council's employees, rate-payers or service users, are delivered up to the Council or securely destroyed.
- 7.5 At any stage during the Engagement, the Consultant will promptly on request return to the Council all and any Council Property in its possession.
- 7.6 The Consultant agrees that the Council reserves the right to disclose Information under the Freedom of Information Act 2000 ("the Act") as appropriate and that for such purposes Information that would otherwise be regarded as or has been described as confidential shall be disclosable under the Act.

8 **DATA PROTECTION**

- 8.1 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 5 by the Council and may not be determined by the Consultant.
- 8.2 The Consultant shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 8.3 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:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

8.4 The Consultant shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule 5, 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;
- (b) ensure that it has in place Protective Measures, as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that :
 - (i) the Consultant Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 5);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Consultant's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Consultant or any Sub-processor;
 - (C) 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 Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

- (i) the Council or the 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;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) 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
 - (iv) the Consultant complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (e) at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Consultant is required by Law to retain the Personal Data.

8.5 Subject to clause 8.6, the Consultant shall notify the Council immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) 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
- (f) becomes aware of a Data Loss Event.

8.6 The Consultant's obligation to notify under clause 8.5 shall include the provision of further information to the Council in phases, as details become available.

8.7 Taking into account the nature of the processing, the Consultant shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 8.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

- (a) the Council with full details and copies of the complaint, communication or request;

- (b) 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;
 - (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Council following any Data Loss Event;
 - (e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- 8.8 The Consultant shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Consultant employs fewer than 250 staff, unless:
- (a) the Council determines that the processing is not occasional;
 - (b) the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 8.9 The Consultant shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor. The Council is entitled, on giving at least three days' notice to the Consultant, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of Personal Data under this Agreement by the Consultant. The requirement to give notification in advance will not apply if the Council believes that the Consultant is in breach of any of its obligations under this Agreement. The Consultant shall designate a data protection officer if required by the Data Protection Legislation.
- 8.10 The Consultant shall designate a data protection officer if required by the data protection legislation
- 8.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Consultant must:
- (a) notify the Council in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Council;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 8 such that they apply to the Sub-processor; and
 - (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

- 8.12 The Consultant shall remain fully liable for all acts or omissions of any Sub-processor.
- 8.13 The Council may, at any time on not less than 30 Working Days' notice, 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 Agreement).
- 8.14 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Consultant amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Officer.
- 8.15 The Consultant shall undertake all of the above processing activities at its own expense and at no extra cost to the Council.
- 8.16 The Council retention and disposal schedule as provided in Schedule 5 will be followed by the Consultant where appropriate and relevant; no decisions on retention or disposal are to be made by the Consultant unless it is part of detailed Processing under this Agreement.
- 8.17 The Consultant shall without undue delay inform the Council if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. The Consultant will make regular backups of the Personal Data and will restore such Personal Data at its own expense.

9 INTELLECTUAL PROPERTY

- 9.1 The Consultant hereby assigns to the Council all existing and future Intellectual Property Rights in the Works and the Inventions and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this Agreement, the Consultant holds legal title in these rights and inventions on trust for the Council.
- 9.2 The Consultant undertakes to the Council:
- 9.2.1 to notify to the Council in writing full details of all Inventions promptly on their creation;
- 9.2.2 to keep confidential the details of all Inventions;
- 9.2.3 whenever requested to do so by the Council and in any event on the termination of the Engagement, promptly to deliver to the Council all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Works and the process of their creation which are in its or the Individual's possession, custody or power;
- 9.2.4 not to register nor attempt to register any of the Intellectual Property Rights in the Works, nor any of the Inventions, unless requested to do so by the Council; and
- 9.2.5 to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the Works and the Inventions has passed, or will pass, to the Council,

- 9.2.6 to use the data collected for the purposes of this Agreement solely for the purposes of evaluation as described in the Specification in Schedule 1
- 9.2.7 to use the anonymised data provided by the Council following the termination of this Agreement for research and teaching use only
- 9.3 The Consultant warrants that:
- 9.3.1 it has not given and will not give permission to any third party to use any of the Works or the Inventions, nor any of the Intellectual Property Rights in the Works;
- 9.3.2 it is unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and
- 9.3.3 the use of the Works or the Intellectual Property Rights in the Works by the Council will not infringe the rights of any third party.
- 9.4 The Consultant agrees to indemnify the Council and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Council, or for which the Council may become liable, with respect to any intellectual property infringement claim or other claim relating to the Works or Inventions supplied by the Consultant to the Council during the course of providing the Services. The Consultant shall supply a copy of the policy to the Council on request. The Council may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Consultant.
- 9.5 The Consultant waives any moral rights in the Works to which it is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such Works or other materials infringes the Consultant's moral rights.
- 9.6 The Consultant acknowledges that no further remuneration or compensation other than that provided for in this Agreement is or may become due to the Consultant in respect of the performance of its obligations under this Clause 9.
- 9.7 The Consultant undertakes to execute all documents, make all applications, give all assistance and do all acts and things, at the expense of the Council and at any time either during or after the Engagement, as may, in the opinion of the Council, be necessary or desirable to vest the Intellectual Property Rights in, and register or obtain patents or registered designs in, the name of the Council and to defend the Council against claims that works embodying Intellectual Property Rights or Inventions infringe third party rights, and otherwise to protect and maintain the Intellectual Property Rights in the Works.

10 **INSURANCE AND LIABILITY**

- 10.1 Nothing in this Agreement shall limit or exclude the Consultant's liability for:

- 10.1.1 death or personal injury caused by its negligence;
- 10.1.2 fraud or fraudulent misrepresentation;
- 10.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) and any other liability which cannot be limited or excluded by applicable law.
- 10.2 The Consultant shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- 10.2.1 public liability insurance with a limit of indemnity of not less than £5,000,000 (five million pounds) in relation to any one claim or series of claims;
- 10.2.2 employers liability insurance with a limit of indemnity of not less than £5,000,000 (five million pounds) in relation to any one claim or series of claims;
- 10.2.3 professional indemnity insurance with a limit of indemnity of not less than £5,000,000 (five million pounds) in relation to any one claim or series of claims;
- in respect of all risks which may be incurred by the Consultant, arising out of the Consultant's performance of this Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Consultant.
- 10.3 The Consultant shall have 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 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.
- 10.4 The Consultant shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to the Council and that the level of cover and other terms of insurance are acceptable to and agreed by the Council.
- 10.5 The Consultant shall on request supply to the Council copies of the Insurance Policies and evidence that the relevant premiums have been paid.
- 10.6 The Consultant shall comply with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Consultant is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Consultant shall notify the Council without delay.
- 10.7 The Consultant shall have in place appropriate measures to ensure the prevention of the facilitation of tax fraud by them and any associated person providing services for or on their behalf.

11 TERMINATION

- 11.1 Notwithstanding the provisions of Clause 2.2, the Council may terminate the Engagement with immediate effect without notice and without any liability to make any further payment to the Consultant (other than in respect of amounts accrued before the Termination Date) if at any time:
- 11.1.1 the Consultant commits any gross misconduct affecting the Council;
 - 11.1.2 the Consultant commits any serious or repeated breach or non-observance of any of the provisions of this Agreement or refuses or neglects to comply with any reasonable and lawful directions of the Council;
 - 11.1.3 the Consultant is, in the reasonable opinion of the Council, negligent or incompetent in the performance of the Services;
 - 11.1.4 the Consultant makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding-up order is made or an administrator or receiver is appointed in relation to the Consultant;
 - (a) the Consultant is incapacitated (including by reason of illness or accident) from providing the Services for an aggregate period of 5 (five) days in any 4 (four) –week consecutive period;
 - 11.1.5 the Consultant commits any fraud or dishonesty or acts in any manner which in the opinion of the Council brings or is likely to bring the Consultant or the Council into disrepute or is materially adverse to the interests of the Council
 - 11.1.6 the Consultant commits any offence under the Bribery Act 2010; or
 - 11.1.7 any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.
- 11.2 The rights of the Council under Clause 11.1 are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this Agreement on the part of the Consultant as having brought the Agreement to an end. Any delay by the Council in exercising its rights to terminate shall not constitute a waiver of these rights.
- 11.3 In the event that at any time the sum due to the Consultant from the Council have been overdue for payment for a period of 60 days or more, the Council will have committed a default ("Default"). The Consultant may terminate this Agreement in the event that the Council commits a Default by giving 30 days' written notice to the Council. In the event that the Council remedies Default in the 30 day notice period, the Consultant's notice to terminate this Agreement shall be deemed to have been withdrawn.

12 OBLIGATIONS ON TERMINATION

- 12.1 On the Termination Date the Consultant shall:

- 12.1.1 immediately deliver to the Council all Council Property which is in its or his possession or under its or his control;
- 12.1.2 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 its or his possession or under its or his control outside the premises of the Council.

13 STATUS

- 13.1 The relationship of the Consultant to the Council will be that of independent contractor and nothing in this Agreement shall render it an employee, worker, agent or partner of the Council and the Consultant shall not hold itself out as such
- 13.2 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant shall be fully responsible for and shall indemnify the Council for and in respect of:
 - 13.2.1 any liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the Consultant in respect of the Services, where such recovery is not prohibited by law. The Consultant shall further indemnify the Council against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Council in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Council's negligence or wilful default;
 - 13.3 The Council may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Consultant.
 - 13.4 The Consultant warrants that it is not nor will it prior to the cessation of this Agreement, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.
 - 13.5 This Agreement is Independent of and without any condition to any existing or future commercial deal and not intended to vary or supersede any other separate agreement that may exist between the Parties and which is regulated separately under the terms of that agreement or arrangement

14 NOTICES

- 14.1 Any notice given under this Agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party at its registered office for the time being. Any such notice shall be deemed to have been received:
 - 14.1.1 if delivered personally, at the time of delivery;
 - 14.1.2 in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting.

14.2 In proving such service it shall be sufficient to prove that the envelope containing such 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.

15 ENTIRE AGREEMENT

15.1 Each party on behalf of itself acknowledges and agrees with the other party that:

15.1.1 this Agreement together with any documents referred to in it constitute the entire Agreement and understanding between the Consultant and the Council and supersedes any previous Agreement between them relating to the Engagement (which shall be deemed to have been terminated by mutual consent);

15.1.2 in entering into this Agreement neither party has relied on any Pre-Contractual Statement; and

15.1.3 the only remedy available to it or arising out of or in connection with any Pre-Contractual Statement shall be for breach of contract. Nothing in this Agreement shall, however, operate to limit or exclude any liability for fraud.

16 VARIATION

No variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

17 COUNTERPARTS

17.1 This Agreement may be executed in any number of counterparts, each of which, when executed, shall be an original, and all the counterparts together shall constitute one and the same instrument.

18 THIRD PARTY RIGHTS

18.1 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this.

18.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a party to this Agreement.

19 GOVERNING LAW AND JURISDICTION

19.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

19.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this

Agreement or its subject matter or formation (including non-contractual disputes or claims).

20 DISPUTE RESOLUTION

20.1 Either party may call an extraordinary meeting of the parties by service of not less than 5 (five) Working Days' written notice and each party agrees to procure that it shall attend all extraordinary meetings called in accordance with this Clause.

20.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this Agreement. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to senior officers of the two parties who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the senior officers fail to resolve the dispute in the allotted time, then the Dispute Resolution Procedure shall be deemed exhausted.

21 SURVIVAL

21.1 Clauses 7 (Confidential Information and Council Property), 8 (Data Protection) and 9 (Intellectual Property) shall survive termination or expiry of this Agreement.

22 FREEDOM OF INFORMATION

22.1 The Consultant acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council to comply with these Information disclosure requirements.

22.2 The Consultant shall upon receiving any Request for Information:

22.2.1 Notify the Council of the Request for Information as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;

22.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and

22.2.3 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 section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

22.3 The Council shall be responsible for and have full discretion in determining whether any Information:

22.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or

22.3.2 is to be disclosed in response to a Request for Information.

22.4 The Consultant acknowledges that where the Council receives a Request for Information that it may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

22.4.1 without consulting with the Consultant; or

22.4.2 following consultation with the Consultant and having taken its views into account,

provided always that where clause 22.4.1 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give Consultant advanced notice, or failing that, to draw the disclosure to the Consultant's attention after any such disclosure.

22.5 The Consultant shall ensure that all Information produced in the course of this Agreement or relating to this Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

22.6 The Consultant acknowledges that any details provided by it outlining Information that it considers confidential or commercially sensitive are of indicative value only and that the Council may nevertheless be obliged to disclose such Information in accordance with clause 22.5.

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This Agreement is entered in to on the day, month and year mentioned at the beginning of the document.

Signed by / Executed as a DEED by
LEICESTER CITY COUNCIL acting by

Authorised Signatory

.....
Signature

Signed by / Executed as a DEED by
[NAME OF COMPANY]

acting by

a director and a director OR its secretary OR a
witness

.....
Signature
Director Name

.....
Signature
Director/Secretary Name

in the presence of:

.....

Signature Of Witness

Name Of Witness

Address Of Witness

Occupation Of Witness

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Schedule 1 – Services

[insert specification here]

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Schedule 2 – Council Policies

1.1 PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWING)

The Consultant shall comply with the Public Interest Disclosure Act 1998 (as if such Act applied to the Consultant) and shall establish and where necessary update from time to time a procedure for the Consultant's Personnel encouraging those personnel to report to the Consultant any incidents of malpractice within the Consultant or Employer. In this context "malpractice" shall include any fraud or financial irregularity, corruption, criminal offences, failure to comply with any legal or regulatory obligation, endangering the health or safety of any individual, endangering the environment, serious misconduct or serious financial maladministration

1.2 EQUALITY REQUIREMENTS

- a) In the performance of the Services the Consultant (and its third party agents, suppliers or sub-Consultants) shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination including the Equality Act 2010 (as amended from time to time) whether in race, gender, religion, belief, disability, sexual orientation, age, human rights or otherwise in employment and shall have regard to other official guidance and code of practice in relation to promotion of equality in employment.
- b) The Consultant shall take all reasonable steps to secure the observance of Clause 1.2 by its Staff employed in the execution of this Contract:
 - (i) The Consultant shall have an equal opportunities policy approved by the Council or shall have adopted the Council's own equal opportunities policy and procedures which is available on Leicester City Council's website as may be amended from time to time and notified to the Consultant
 - (ii) The Consultant shall provide such Information as the Council may reasonably require for the purpose of assessing the Consultant's continued compliance with this Clause 1.2
- c) If any Court or tribunal, or the Equality and Human Rights Commission (or any other Commission promoting equal opportunity) should make any finding of unlawful discrimination against the Consultant, then the Consultant shall immediately inform the Council of such a finding and the Council shall have the right to terminate this Contract if, having discussed the matter with the Consultant, it is of the opinion that the actions of the Consultant leading up to the finding were sufficiently serious as to undermine its compliance with Clause 1.2 above.
- d) In the event that the Council does not exercise its right of termination under Clause 1.3 the Consultant shall discuss with the Council the appropriate steps the Consultant needs to take to prevent repetition of the unlawful discrimination and shall provide the Council with details of any such steps taken.
- e) The Consultant (and its third party agents, suppliers or sub-Consultant's) shall comply with any other relevant code of practice introduced by a commission or other

body set up by Parliament to promote, monitor and enforce equality legislation including, but not limited to, those provisions recommending the adoption, implementation and monitoring of an equal opportunities policy.

- f) The Consultant shall comply with the National Minimum Wage Act 1998 (as amended) in relation to the payment of its Staff. For the avoidance of doubt and where applicable the Employer reserves the right to request the Consultant to comply with the National Living Wage as determined and in force from time to time in the United Kingdom
- g) The Consultant shall observe as far as possible all relevant codes of practice
- h) The Consultant shall provide such Information as the Council may reasonably request for the purpose of assessing the Consultant's compliance with these paragraphs as far as relevant
- i) The Consultant shall at all times maintain a system of audit monitoring and actions in respect of its employment practices, services and customer care generally with a view to eliminating any disadvantage or discrimination on the basis of, and to promote equality of opportunity on the grounds of race (including ethnic origin, nationality, national origin or colour) gender, marital status, gender reassignment or disability, the promotion of good race relations between people of different racial groups the need to take steps to take account of disabled persons disabilities, the promotion of positive attitudes towards disabled persons and the need to encourage participation by disabled persons in public life. Further, the Consultant shall co-operate with the Council in providing statistics and other Information as the Council may from time to time reasonably require in connection with its duties as a public authority in connection with gender, race and disability.

1.3 BEST VALUE

- a) In undertaking the Services, the Consultant shall be under a duty to secure demonstrable, measurable continuous improvement (having regard to efficiency, economy and effectiveness) in the achievement of the delivery of its contractual obligations and of the Services as a whole, including specifically the cost of the Services, the time, cost quality and health and safety standards of the various processes involved in delivery of the Services AND FURTHER the Consultant shall co-operate with the Council and others to the extent required so that the Council can keep under review the performance of the Services required under this Agreement and this paragraph in particular.
- b) The Consultant acknowledges that the Employer is subject to Best Value Duty and undertakes to assist the Employer in achieving its Best Value Duty in relation to the Services as required under the Local Government Act 1999 (as amended from time to time).
- c) Pursuant to Clause 1.3, the Consultant shall throughout the Contract Period and in accordance with its obligations under this Contract, provide a service that represents value for money.

- d) Pursuant to Clause 1.3 the Consultant shall throughout the Contract Period and in accordance with its obligations under this Contract, provide an efficiency gain plan having regard to a combination of economy, efficiency and effectiveness and which shall demonstrate the intention to deliver the Employer no less than 2% savings per annum year on year.
- e) The Consultant's Continuous Improvement Plan to secure continuous improvement in the way in which the Services are provided shall be reviewed by the Employer in accordance with the provisions of this Contract.

1.4 ENVIRONMENT

- a) The Consultant shall comply with his statutory obligations under Environmental Legislation and for the purposes of this contract "Environmental Legislation" means any EU directives, Acts, regulations, directions or guidance having statutory effect which make provision for the control of pollution, the control of hazardous substances, the control of land use, the protection of wildlife, planting and the countryside. The Consultant shall upon request provide the Employer with details of any steps taken under or in relation to this Clause. The Consultant shall upon request provide the Council with details of any steps taken under or in relation to this Clause

The Consultant shall:

- b) institute and maintain an environmental management system in accordance with the procedures targets and other specifications mentioned in, and shall provide and perform the Works in all respects in accordance with, the Environmental Statement (where the words "Environmental Statement" mean the environmental method statement and any other Information or representations supplied with incorporated into or presented within the Consultant's response to the Employer's invitation to the Consultant to bid or negotiate for this contract.
- c) operate such environmental management system as referred herein during the operational phase that complies with the Employer's environmental objectives and targets (a copy of which is available from the Employer on request) and shall furnish such detailed Information as the Employer may reasonably require in regard thereto and without prejudice to the generality of the foregoing shall accurately complete and submit to the Employer, at such times as the Employer shall reasonably direct (but so that the Consultant shall not be required to submit more than one return in any one period of 12 months), performance returns in the form to be directed by the Employer (acting reasonably). The Consultant shall also permit the Employer (acting reasonably) to inspect the system referred to in this paragraph for compliance with the requirements of this paragraph.
- d) The Consultant shall ensure that all vehicles and motorised plant used in the fulfilment of this Contract shall comply with the Employer's best practice requirements under its policies from time to time in force. Where higher standards are not set under such policy the minimum standard will be for all vehicles used in

the provision of the Works to meet the Euro III Standard and if the vehicle has a diesel engine it must run on a biofuel mix of at least 5%.

1.5 **HEALTH AND SAFETY**

- a) The Consultant shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of this Agreement. Agreement
- b) The Consultant shall comply with any health and safety measures in respect of staff and other persons working on the Premises.
- c) The Consultant shall notify the Council immediately in the event of any incident occurring in the performance of this Agreement where that incident causes any personal injury or damage to property that could give rise to personal injury.
- d) The Consultant shall 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, which may apply to staff and other persons in the performance of this Agreement.
- e) 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.

Schedule 3 – Consultant’s Submission

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Schedule 4 – Fees

The Consultant shall be paid the payments in accordance with [xxx] insert details here

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Schedule 5 – Processing, Personal Data and Data Subjects

Commented [SE1]: This will need to be completed if there is any personal data involved

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.

Description	Details
Subject matter of the processing	
Duration of the processing	.
Nature and purposes of the processing	
Type of Personal Data	
Categories of Data Subject	
Plan for retention and disposal of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	