



Dated20[XX]

Between

WEST LONDON WASTE AUTHORITY

AND

<<CONSULTANT COMPANY>>

**CONSULTANCY AGREEMENT FOR THE PROVISION OF
HEALTH AND SAFETY SERVICES**

HB Public Law
Harrow Council
PO Box 2
Civic Centre
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Harrow
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WLWA-WLW01-053436CONTENTS

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THIS AGREEMENT is dated

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PARTIES

- (1) **WASTE LONDON WASTE AUTHORITY** whose principal place of business is at Unit 6, Britannia Court, The Green, West Drayton, UB7 7PN (the “**Client**”).
- (2) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the “**Consultant Company**”).

Together the “**Parties**”

AGREED TERMS

1. INTERPRETATION

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

Agreement: this Contract.

Business of the Client: general public services.

Business Opportunities: any opportunities which the Consultant Company or the Individual becomes aware of during the Engagement which relate to the Business of the Client or which the Consultant Company or the Individual reasonably considers might be of benefit to the Client.

Capacity: as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

Client 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 Client or its customers and business contacts, and any equipment, keys, hardware or software provided for the Consultant Company or the Individual's use by the Client during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Consultant Company or the Individual on the computer systems or other electronic equipment of the Client, the Consultant Company or the Individual during the Engagement.

Commencement Date: [DATE OF COMMENCEMENT OF ENGAGEMENT]

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 Client for the time being confidential to the Client and trade secrets including, without limitation, technical data and know-how relating to the Business of the Client 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 Company or the Individual 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.

Controller: the meaning given in the GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Consultant Company under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Protection Legislation: (i) the DPA; (ii) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; and (iii) all applicable Law about the processing of Personal Data and privacy.

Data Protection Officer: the meaning given in the GDPR.

Data Subject: the meaning given in the GDPR.

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA: (i) the Data Protection Act 1998 and (ii) subject to Royal Assent, the Data Protection Act 2018 to the extent that it relates to processing of Personal Data and privacy.

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

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

Individual: [NAME]

Initial Term: the period commencing on the Commencement Date and ending on the **first** anniversary of the Commencement Date.

Insurance Policies: [commercial general liability insurance cover,] [cyber insurance cover,] [employer's liability insurance cover,] [professional indemnity insurance cover] [[and] public liability insurance cover].

Intellectual Property Rights: patents, [utility models,] rights to Inventions, copyright and [neighbouring and] related rights, [moral rights,] trade marks [and service marks], business names and domain names, rights in get-up [and trade dress], goodwill and the right to sue for passing off [or unfair competition,] rights in designs, [rights in computer software,] database rights, rights to use, and protect the confidentiality of, confidential information (including know-how [and trade secrets]) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

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

Law: any law, statute, 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, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Consultant Company is bound to comply.

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

Party: a Party to this Agreement.

Personal Data / Personal Data Breach: the meaning given in the GDPR.

Processor: the meaning given in the GDPR.

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of any such measures adopted by it.

Services: the services described in Schedule 1.

Consultant Company's Personnel: all employees, staff, other workers, agents and consultants of the Consultant Company and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Sub-processor: any third party appointed to process Personal Data on behalf of the Consultant Company related to this Agreement.

[Substitute: a substitute for the Individual appointed under the terms of Clause 3.3.]

Commented [j1]: Can be deleted if only want the expertise of the individual consultant chosen – see clause 3.3.

Term: the period of the Initial Term as may be varied by:

- (a) any extensions to this agreement which are agreed pursuant to Clause 2; or
- (b) the earlier termination of this agreement in accordance with its terms.

Termination Date: the date of 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 Company or the Individual in connection with the provision of the Services.

- 1.2 The headings in this Agreement are inserted for convenience only and shall not affect its construction.
- 1.3 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.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

2. TERM OF ENGAGEMENT

2.1 The Client shall engage the Consultant Company and the Consultant Company shall make available to the Client the Individual to provide the Services on the terms of this Agreement.

2.2 The Engagement shall [commence **OR** be deemed to have commenced] on the Commencement Date and shall for the Term

2.3 The Client may extend this Agreement beyond the Initial Term by a further period of up to one (1) year (Extension Period). If the Client wishes to extend this Agreement, it shall give the Consultant Company at least two months' written notice of such intention before the expiry of the Initial Term.

2.4 If the Client gives such notice then the Term shall be extended by the period set out in the notice.

2.5 If the Client does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of Clause 12 shall apply.

3. DUTIES AND OBLIGATIONS

3.1 During the Engagement the Consultant Company shall, and (where appropriate) shall procure that the Individual shall:

- (a) provide the Services with all due care, skill and ability and use its or his best endeavours to promote the interests of the Client;
- (b) unless the Individual is prevented by ill health or accident, devote at least [NUMBER] [hours **OR** days] in each calendar month to the carrying out of the Services together with such additional time if any as may be necessary for their proper performance; and
- (c) promptly give to the Client all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services or the Business of the Client

3.2 If the Individual is unable to provide the Services due to illness or injury, the Consultant Company shall advise the Client of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in accordance with Clause 4 in respect of any period during which the Services are not provided.

Commented [j2]: Insert number of hours or days required.
Amend wording as appropriate

3.3 [The Consultant Company may, with the prior written approval of the Client and subject to the following proviso, appoint a suitably qualified and skilled Substitute to perform the Services instead of the Individual, provided that the Substitute shall be required to enter into direct undertakings with the Client, including with regard to confidentiality. If the Client accepts the Substitute, the Consultant Company shall continue to invoice the Client in accordance with Clause 4 and shall be responsible for the remuneration of the Substitute.]

Commented [j3]: Delete sub-clause if only want the expertise of the individual consultant chosen.

3.4 The Consultant Company shall use its reasonable endeavours to ensure that the Individual is available at all times on reasonable notice to provide such assistance or information as the Client may require.

3.5 Unless it or he has been specifically authorised to do so by the Client in writing:

- (a) neither the Consultant Company nor the Individual shall have any authority to incur any expenditure in the name of or for the account of the Client; and
- (b) the Consultant Company shall not, and shall procure that the Individual shall not, hold itself out as having authority to bind the Client.

3.6 The Consultant Company shall, and shall procure that the Individual shall, comply with all reasonable standards of safety and comply with the Client's health and safety procedures from time to time in force at the premises where the Services are provided and report to the Client any unsafe working conditions or practices.

3.7 The Consultant shall comply with the Client's policies on use of information and communication systems, anti-harassment and bullying, no smoking, substance misuse, procurement and other policies relevant to the role.

3.8 The Consultant Company undertakes to the Client that during the Engagement it shall, and shall procure that the Individual shall, take all reasonable steps to offer (or cause to be offered) to the Client any Business Opportunities as soon as practicable after the same shall have come to its or his knowledge and in any event before the same shall have been offered by the Consultant Company or the Individual (or caused by the Consultant Company or the Individual to be offered) to any other party provided that nothing in this Clause shall require the Consultant Company or the Individual to disclose any Business Opportunities to the Client if to do so would result in a breach by the Consultant Company or the Individual of any obligation of

confidentiality or of any fiduciary duty owed by it or him to any third party.

3.9 The Consultant Company may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that:

- (a) the Client will not be liable to bear the cost of such functions; and
- (b) at the Client's request the third party shall be required to enter into direct undertakings with the Client, including with regard to confidentiality.

3.10 The Consultant Company shall, and shall procure that the Individual shall:

- (a) 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**);
- (b) 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;
- (c) 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] the Relevant Policies [and Clause 3.10(b)], and will enforce them where appropriate;
- (d) promptly report to the Client any request or demand for any undue financial or other advantage of any kind received by the Consultant Company or the Individual in connection with the performance of this Agreement;
- (e) immediately notify the Client if a foreign public official becomes an officer or employee of the Consultant Company or acquires a direct or indirect interest in the Consultant Company (and the Consultant Company warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement);
- (f) ensure that all persons associated with the Consultant Company or other persons who are performing services in connection with this Agreement comply with this Clause 3.10; and

- (g) within two months of the date of this Agreement, and annually thereafter, certify to the Client in writing signed by an officer of the Consultant Company, compliance with this Clause 3.10 by the Consultant Company and all persons associated with it, including the Individual, and all other persons for whom the Consultant Company is responsible under Clause ~~3.10(f)~~~~3.10(g)~~. The Consultant Company shall provide such supporting evidence of compliance as the Client may reasonably request.

3.11 Failure to comply with Clause 3.10 may result in the immediate termination of this Agreement.

3.12 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(6) of that Act and section 8 of that Act respectively. For the purposes of Clause 3.10, a person associated with the Consultant Company includes [but is not limited to] any Substitute for the Individual.

4. FEES

4.1 The Client shall pay the Consultant Company a fee of £[AMOUNT] per [hour OR day] [exclusive OR inclusive] of VAT. On the last working day of each month during the Engagement the Consultant Company shall submit to the Client an invoice which gives details of the [hours OR days] which the Individual [or any Substitute] has worked, the Services provided and the amount of the fee payable (plus VAT, if applicable) for the Services during that month.

Commented [j4]: Insert figure.

Commented [j5]: Amend accordingly.

Commented [j6]: Amend accordingly.

Commented [j7]: Amend accordingly.

Commented [j8]: Delete if only want the expertise of the individual consultant chosen.

4.2 In consideration of the provision of the Services, the Client shall pay each invoice submitted by the Consultant Company in accordance with Clause 4.1, within [NUMBER] days of receipt.

Commented [j9]: Insert number of days.

4.3 The Client shall be entitled to deduct from the fees (and any other sums) due to the Consultant Company any sums that the Consultant Company or the Individual may owe to the Client at any time.

4.4 Payment in full or in part of the fees claimed under Clause 4 [or any expenses claimed under Clause 5] shall be without prejudice to any claims or rights of the Client against the Consultant Company or the Individual in respect of the provision of the Services.

Commented [j10]: Remove if the Consultant Company shall bear its own expenses – see clause 5.1.

5. EXPENSES

- 5.1 [The Client shall reimburse all reasonable expenses properly and necessarily incurred by the Consultant Company or the Individual in the course of the Engagement, subject to production of receipts or other appropriate evidence of payment **OR** The Consultant Company shall bear its own expenses incurred in the course of the Engagement].

Commented [j11]: Amend accordingly.

- 5.2 If the Individual is required to travel abroad in the course of the Engagement, the Consultant Company shall be responsible for any necessary insurances, inoculations and immigration requirements.

6. OTHER ACTIVITIES

- 6.1 Nothing in this Agreement shall prevent the Consultant Company or the Individual 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:

- (a) such activity does not cause a breach of any of the Consultant Company's obligations under this Agreement;
- (b) the Consultant Company shall not, and shall procure that the Individual shall not, engage in any such activity if it relates to a business which is similar to or in any way competitive with the Business of the Client without the prior written consent of the Client; and
- (c) the Consultant Company shall give priority to the provision of the Services to the Client over any other business activities undertaken by it during the course of the Engagement.

7. CONFIDENTIAL INFORMATION AND CLIENT PROPERTY

- 7.1 The Consultant Company acknowledges that in the course of the Engagement it and the Individual will have access to Confidential Information. The Consultant Company has therefore agreed to accept the restrictions in this Clause 7.

- 7.2 The Consultant Company shall not, and shall procure that the Individual shall not (except in the proper course of its or his duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use its best endeavours to prevent the publication and disclosure of) any Confidential Information. This restriction does not apply to:

- (a) any use or disclosure authorised by the Client or required by law; or
- (b) any information which is already in, or comes into, the public domain otherwise than through the Consultant Company's or the Individual's unauthorised disclosure.

7.3 At any stage during the Engagement, the Consultant Company will promptly on request return to the Client all and any Client Property in its or the Individual's possession.

8. DATA PROTECTION

8.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Consultant Company is the Processor. The only processing that the Consultant Company is authorised to do is listed in Schedule 2 by the Client and may not be determined by the Consultant Company.

Commented [j12]: This should be checked on a case by case basis. Where the Consultant Company is either the Controller or a Joint Controller this clause will need to be amended accordingly.

8.2 The Consultant Company shall notify the Client immediately if it considers that any of the Client's instructions infringe the Data Protection Legislation.

8.3 The Consultant Company shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Client, 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 Company 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 2, unless the Consultant Company is required to do otherwise by Law. If it is so required the Consultant Company shall

promptly notify the Client before processing the Personal Data unless prohibited by Law;

- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Client 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 Company's Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 2);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Consultant Company's Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Consultant Company's duties under this Clause;
 - (B) are subject to appropriate confidentiality undertakings with the Consultant Company 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 Client 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 Client has been obtained and the following conditions are fulfilled:
 - (i) the Client or the Consultant Company has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Client;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Consultant Company 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 Client in meeting its obligations); and

- (iv) the Consultant Company complies with any reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- (e) at the written direction of the Client, and at the Consultant Company's sole cost, delete or return Personal Data (and any copies of it) to the Client on termination of the Agreement unless the Consultant Company is required by Law to retain the Personal Data.

8.5 Subject to Clause 8.6, the Consultant Company shall notify the Client 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 Company's obligation to notify under Clause 8.5 shall include the provision of further information to the Client in phases, as details become available.

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

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

- (b) such assistance as is reasonably requested by the Client to enable the Client to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Client, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Client following any Data Loss Event;
 - (e) assistance as requested by the Client with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office.
- 8.8 The Consultant Company shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Consultant Company employs fewer than 250 staff, unless:
- (a) the Client determines that the processing is not occasional;
 - (b) the Client 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 Client determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 8.9 The Consultant Company shall allow for audits of its Data Processing activity by the Client or the Client's designated auditor.
- 8.10 The Consultant Company 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 Company must:
- (a) notify the Client in writing of the intended Sub-Processor and processing;
 - (b) obtain the written consent of the Client;
 - (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 Client with such information regarding the Sub-Processor as the Client may reasonably require.

- 8.12 The Consultant Company shall remain fully liable for all acts or omissions of any Sub-Processor.
- 8.13 The Consultant Company 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 Client may on not less than 30 Working Days' notice to the Consultant Company amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

9. INTELLECTUAL PROPERTY

- 9.1 The Consultant Company warrants to the Client that it has obtained from the Individual a written and valid assignment of all existing and future Intellectual Property Rights in the Works and the Inventions and of all materials embodying such rights and a written irrevocable waiver of all the Individual's statutory moral rights in the Works, to the fullest extent permissible by law, and that the Individual has agreed to hold on trust for the Consultant Company any such rights in which the legal title has not passed (or will not pass) to the Consultant Company. The Consultant Company agrees to provide to the Client a copy of this assignment on or before the date of this Agreement.
- 9.2 The Consultant Company hereby assigns to the Client 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 Company holds legal title in these rights and inventions on trust for the Client.
- 9.3 The Consultant Company undertakes to the Client:
- (a) to notify to the Client in writing full details of all Inventions promptly on their creation;
 - (b) to keep confidential the details of all Inventions;
 - (c) whenever requested to do so by the Client and in any event on the termination of the Engagement, promptly to deliver to the Client 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;

- (d) 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 Client; and
- (e) 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 Client,

and confirms that the Individual has given written undertakings in the same terms to the Consultant Company.

9.4 The Consultant Company warrants that:

- (a) 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;
- (b) it is unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and
- (c) the use of the Works or the Intellectual Property Rights in the Works by the Client will not infringe the rights of any third party,

and confirms that the Individual has given written undertakings in the same terms to the Consultant Company.

9.5 The Consultant Company agrees to indemnify the Client and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Client, or for which the Client may become liable, with respect to any intellectual property infringement claim or other claim relating to the Works or Inventions supplied by the Consultant Company to the Client during the course of providing the Services. The Consultant Company shall maintain adequate liability insurance coverage and ensure that the Client's interest is noted on the policy, and shall supply a copy of the policy to the Client on request. The Client may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Consultant Company.

9.6 The Consultant Company acknowledges that no further remuneration or compensation other than that provided for in this Agreement is or may become due to the Consultant Company in respect of the performance of its obligations under this Clause 9.

- 9.7 The Consultant Company undertakes to execute all documents, make all applications, give all assistance and do all acts and things, at the expense of the Client and at any time either during or after the Engagement, as may, in the opinion of the Client, be necessary or desirable to vest the Intellectual Property Rights in, and register or obtain patents or registered designs in, the name of the Client and to defend the Client 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. The Consultant Company confirms that the Individual has given written undertakings in the same terms to the Consultant Company.
- 9.8 The Consultant Company irrevocably appoints the Client to be its attorney in its name and on its behalf to execute documents, use the Consultant Company's name and do all things which are necessary or desirable for the Client to obtain for itself or its nominee the full benefit of this Clause. A certificate in writing, signed by any director or the secretary of the Client, that any instrument or act falls within the authority conferred by this Agreement shall be conclusive evidence that such is the case so far as any third party is concerned.

10. INSURANCE AND LIABILITY

- 10.1 The Consultant Company shall have liability for and shall indemnify the Client for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from [any breach by the Consultant Company or the Individual [or any Substitute engaged by it] 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.
- 10.2 The Consultant Company shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to the Client and that the level of cover and other terms of insurance are acceptable to and agreed by the Client.
- 10.3 The Consultant Company shall on request supply to the Client copies of the Insurance Policies and evidence that the relevant premiums have been paid.
- 10.4 The Consultant Company shall notify the insurers of the Client's interest and shall cause the interest to be noted on the Insurance Policies together with a provision to the effect that, if any claim is

Commented [j13]: Delete if a substitute is not permitted.

Commented [j14]: Amend as appropriate;

brought or made by the Client against the Consultant Company in respect of which the Consultant Company would be entitled to receive indemnity under any of the Insurance Policies, the relevant insurer will indemnify the Client directly against such claim and any charges, costs and expenses in respect of such claim. If the relevant insurer does not so indemnify the Client, the Consultant Company shall use all insurance monies received by it to indemnify the Client in respect of any claim and shall make good any deficiency from its own resources.

- 10.5 The Consultant Company shall comply (and shall procure that the Individual complies) 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 Company 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 Company shall notify the Client without delay.

11. TERMINATION

- 11.1 Notwithstanding the provisions of Clause 2.2, the Client may terminate the Engagement with immediate effect without notice and without any liability to make any further payment to the Consultant Company (other than in respect of amounts accrued before the Termination Date) if at any time:
- (a) the Consultant Company or the Individual commits any gross misconduct affecting the Business of the Client;
 - (b) the Consultant Company or the Individual 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 Client;
 - (c) the Individual is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed); or
 - (d) the Consultant Company or the Individual is, in the reasonable opinion of the Client, negligent or incompetent in the performance of the Services;
 - (e) the Individual is declared bankrupt or makes any arrangement with or for the benefit of his creditors or has a county court administration order made against him under the County Court Act 1984;
 - (f) the Consultant Company 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 Company;

- (g) the Individual is incapacitated (including by reason of illness or accident) from providing the Services for an aggregate period of 30 days in any 26-week consecutive period;
- (h) the Individual does not own all of the issued share capital (from time to time) of the Consultant Company;
- (i) the Consultant Company or the Individual commits any fraud or dishonesty or acts in any manner which in the opinion of the Client brings or is likely to bring the Individual, the Consultant Company or the Client into disrepute or is materially adverse to the interests of the Client;
- (j) the Consultant Company or the Individual commits any breach of the Client's policies and procedures; or
- (k) the Consultant Company or the Individual commits any offence under the Bribery Act 2010.

11.2 The rights of the Client 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 Company as having brought the agreement to an end. Any delay by the Client in exercising its rights to terminate shall not constitute a waiver of these rights.

11.3 Without affecting any other right or remedy available to it, the client may terminate this agreement at any time by giving two months' written notice to the Consultant Company.

12. OBLIGATIONS ON TERMINATION

On the Termination Date or earlier termination of this Agreement, the Consultant Company shall, and shall procure that the Individual shall:

- (a) immediately deliver and return to the Client all Client Property and Personal Data which is in its or his possession or under its or his control at the Consultant Company's cost and in any manner and/or medium as the Client may reasonably specify;
- (b) irretrievably delete any information relating to the Business of the Client 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 Client. For the avoidance of doubt, the contact details of business contacts made during the Engagement are regarded as Confidential Information, and as such, must be deleted from personal social or professional networking accounts; and

- (c) provide a signed statement that it or he has complied fully with its or his obligations under this Clause 12.

13. STATUS

- 13.1 The relationship of the Consultant Company (and the Individual) to the Client will be that of independent contractor and nothing in this Agreement shall render it (nor the Individual) an employee, worker, agent or partner of the Client and the Consultant Company shall not hold itself out as such and shall procure that the Individual shall not hold himself 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 Company shall be fully responsible for and shall indemnify the Client for and in respect of:
 - (a) any income tax, National Insurance and social security contributions and any other 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 Individual in respect of the Services, where such recovery is not prohibited by law. The Consultant Company shall further indemnify the Client against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Client in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Client's negligence or wilful default];
 - (b) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Individual or any Substitute against the Client arising out of or in connection with the provision of the Services.
- 13.3 The Client may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Consultant Company.
- 13.4 The Consultant Company 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.

14. NOTICES

14.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);
[or
- (b) sent by email].

Commented [j15]: Amend as appropriate for each Consultancy Agreement on a case by case basis.

14.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
- (c) if sent by email at the time of successful transmission except where the sender receives a failed delivery or similar message following transmission.

14.3 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15. ENTIRE AGREEMENT

15.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

15.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

15.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

15.4 Nothing in this Clause shall limit or exclude any liability for fraud.

16. VARIATION

16.1 No variation of this Agreement or of any of the documents referred to in it shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. COUNTERPARTS

17.1 This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

18. THIRD PARTY RIGHTS

18.1 Except as expressly provided elsewhere in this Agreement, 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 Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

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

19. GOVERNING LAW

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 the law of England and Wales.

20. JURISDICTION

20.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it.

The Common Seal of **WEST LONDON
WASTE AUTHORITY** was hereunto
affixed in the presence of:

.....
Authorised Signatory

Executed as a Deed by **[CONSULTANT
COMPANY]** acting by either: two of its
directors; a director and its company
secretary; or by a single director in the
presence of a witness

.....
Director Signature

.....
**Director/Company Secretary
Signature**

.....
Director Name (BLOCK CAPITALS)

.....
**Director/Company Secretary Name
(BLOCK CAPITALS)**

Witness signature:

Witness name:.....
(BLOCK CAPITALS)

Address:

.....

.....

Occupation:

DRAFT

Schedule 1 Services

As required under the Management of Health and Safety at Work Regulations (Regulation 7(1)), West London Waste will appoint a Competent Person (for the purposes of competent health and safety advice) to advise on relevant health and safety management issues impacting the organisation.

Coordinating directly with the Managing Director and Operations Manager, as well as Senior and Site Managers, the appointed Health and Safety Advisor, will be responsible for:

Policy

- a. Ensuring that this health and safety policy, together with all supporting health and safety guidance documentation is subject to periodic review and update as required, to ensure all health and safety management processes remain in date and relevant to the undertakings of the organisation;
- b. Ensuring that all reviewed and updated and additionally developed health and safety guidance is brought to the attention of the Managing Director, for distribution to all relevant management and personnel throughout West London Waste;
- c. Supporting all Senior and Site Managers on the implementation and review of health and safety initiatives and procedures, as detailed in this health and safety policy and supporting guidance documentation;
- d. Working with appointed Supervisors, Chargehands and any union-appointed Health and Safety Representatives of non-union appointed Representatives of Employee Safety, on the implementation and review of risk assessments, safe working procedures, and all other health and safety initiatives.

Communication

- e. Supporting the Managing Director Ensuring that reports on West London Waste's health and safety performance are presented to the Board of West London Waste on at least an annual basis for review and used as a basis for continuous improvement;
- f. Ensuring the Managing Director and Operations Manager are advised regarding changes in health and safety legislation and industry guidance on health and safety impacting West London Waste;
- g. Supporting Senior and Site Managers on the completion of risk assessments and method statements, forming a basis for all agreed safe systems of work and safe working procedures;

- h. Presenting the findings of an accident investigation reports which have been carried out, for any significant incidents or injuries, which may occur.
- i. Ensure affective communication with any union appointed Health and Safety Representatives and non-union appointed Representatives of Employee Safety, to ensure inclusion as needed with these representatives.

Process

- j. Ensuring a system for the completion of risk assessments and method statements is in place, together with a process for bringing to the attention of all Senior/Site Managers and Supervisors, the findings of risk assessments, ensuring the development of safe systems of work;
- k. Carry out regular health and safety inspections of West London Waste's operational sites, with feedback reporting and analysis of any issues identified, to the Operations Manager;
- l. Developing and implementing a system of health and safety audits for the organisation, which should be carried out on an annual basis, with feedback to the Managing Director;
- m. Developing, with the assistance of the Managing Director, a timebound system for the management and close-out of any audit findings, arising from completed audits;
- n. The ongoing development and implementation of risk assessment-based safe working procedures, in-line with the requirements of the health and safety policy;
- o. The development, implementation and review of risk assessments and any emergency procedures as appropriate for West London Waste's operational sites;
- p. Providing qualified and competent support of West London Waste, in its role as 'Client' for any construction-related works which are carried out, ensuring the relevant members of West London Waste's Senior and operational management team are supported and advised as required, on compliance issues, as detailed in the requirements of the Construction (Design and Management) Regulations 2015;
- q. Fulfilling the duty holder position of 'Principal Designer' for all construction projects, falling within the remit of the aforementioned Regulations;

- r. The completion of any incident investigations on behalf of West London Waste, for accidents, incidents, near misses, cases of occupational ill health or dangerous occurrences, which may occur, involving members of West London Waste's employees, sub-contractors or members of the public, on any of West London Waste's operational sites/workplaces;
- s. Analysing of accident, incident and injury report data, including near misses, or minor injuries and the compiling of statistical information for both the Managing Director and Operations Manager;
- t. Notification to the Health and Safety Executive under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations, of any reportable injuries, diseases and dangerous occurrences, as required.
- u. Working with relevant Senior and/or Site Managers, on the health and safety management arrangements, needed, including the completion of specific risk assessments and safe working procedures (including induction) required, for the temporary engagement of young persons, for the purposes of work experience etc.
- v. Working with Senior and/or Site Managers in respect of the completion of specific risk assessments, leading to the development of safe systems of work for any pregnant workers or nursing mothers, employed by West London Waste;

Training and Information

- w. The development and implementation of training initiatives, including refresher training for the West London Waste including, induction training, Manual handling, fire safety and emergency procedures, Supervisory and Management health and safety requirements, and any other health and safety training requirements as identified through health and safety policy requirements, risk assessment and method statement control measures, and audit findings.
- x. To support any non-union appointed Representative of Employee Safety and union appointed Health and Safety Representatives, with detailed information, which they will need, to ensure full inclusion on the union and non-union health and safety function within the organisation.