

DATED

Between

WEST LONDON WASTE AUTHORITY

AND

<<CONSULTANT COMPANY>>

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



Harrow Council
PO Box 2
Civic Centre
Station Road
Harrow
HA1 2UH

DX 30450 HARROW 3

DISCLAIMER: This Model Agreement is not intended to constitute advice in any specific situation. HB Public Law gives you no warranty or assurance about this document. HB Public Law accepts no liability for any losses or damages whatsoever caused by the use of this document where legal input has not been sought from HB Public Law. HB Public Law strongly recommends that you seek advice from the HB Public Law Contract, Procurement and Information Team prior to sending out an initial draft to the Contractor to ensure that its contents are applicable for the specific services required.

WLWA-WLW01-03517

WLWA-WLW01-03517

CONTENTS

CLAUSES

1.	Interpretation.....	1
2.	Term of engagement.....	7
3.	Duties and obligations	7
4.	Fees.....	10
5.	Expenses	11
6.	Other activities.....	11
7.	Confidential information and Client property	11
8.	Data Protection.....	12
9.	Intellectual property.....	18
10.	Insurance and liability	20
11.	Business Continuity and Disaster Recovery.....	21
12.	Force Majeure.....	22
13.	Coronavirus.....	24
14.	Brexit	26
15.	Dispute Resolution	26
16.	Termination	27
17.	Obligations on termination.....	28
18.	Status	29
19.	Notices	29
20.	Entire Agreement	30
21.	Variation	31
22.	Counterparts.....	31
23.	Third party rights	31
24.	Governing law.....	31
25.	Jurisdiction	31

SCHEDULES

SCHEDULE 1 SERVICES	34
SCHEDULE 2 CONSULTANT COMPANY'S TENDER SUBMISSION.....	
SCHEDULE 3 PRICING SCHEDULE.....	
SCHEDULE 4 PROCESSING, PERSONAL DATA AND DATA SUBJECTS.....	
SCHEDULE 5 RELEVANT POLICIES.....	

THIS AGREEMENT is dated 20th December 2021

PARTIES

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

Each a party, together the “Parties”

BACKGROUND

- (A) The Client has invited and received from the Consultant Company a proposal (the “**Consultant Company’s Tender**”) for the provision of {subject of contract} (the “**Services**”). The Client has{, through a competitive process,}selected the Consultant Company to provide the Services and the Consultant Company is willing and able to provide the Services in accordance with the terms and conditions of this Agreement.
- (B) The Consultant Company has agreed to provide the Services to the Client upon the terms set out in this Agreement.

AGREED TERMS

1. INTERPRETATION

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

Agreement: the suite of documents including these terms and conditions and schedules attached hereto forming the contract between the Client and the Consultant Company

Authorised Representatives: the persons respectively designated as such by the Client and the Consultant Company at Clause 19.1(c),

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, any key performance indicators, the term, the pricing structure and any other relevant factors.

{Business Continuity/Disaster Recovery Plan: as defined in Clause 11}

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 Client reasonably considers might be of benefit to the Client

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

{Charges: the prices as set out in the Pricing Schedule attached to this Agreement at Schedule 3}

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: 1st February 2022

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) {EXAMPLES} 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.

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.

Consultant Company's Tender: the Consultant Company's tender response, attached to this Agreement at Schedule 2

Controller: the meaning given in the GDPR.

{Coronavirus: the disease known as coronavirus disease (COVID-19) and the virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)

Coronavirus Event: a Coronavirus epidemic or pandemic that is likely to directly and reasonably prevent, hinder or delay the performance of the Consultant Company's obligations under the Agreement}

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 Sharing Agreement: as outlined at Clause 8.17}

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.

{Disaster Recovery Plan: as defined in Clause 11}

DPA: the Data Protection Act 2018 to the extent that it relates to processing of Personal Data and privacy.

EIR: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

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

{Extension Period: as provided in Clause 2.3}

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under this Act from time to time, together with any guidance or codes of practice issued by the Information Commissioner or such other individual, body or organisation which may from time to time replace the Information Commissioner

Force Majeure {Event}: any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to Consultant Company, the Consultant Company's Personnel or any other failure in the Consultant Company's supply chain.

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

Individual: {NAME}

Insurance Policies: 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.

{Invitation to Quote}/ITQ: the invitation for consultant companies to bid for the Services, attached hereto at Schedule 1}

{Joint Controllers: where the Client and the Consultant Company jointly determine the purposes and means of processing}

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.

{Permitted Recipients: the parties to this Agreement, the directors and employees of each party}

Commented [C1]: Remove this definition if the Joint Controller Agreement at Part B of Schedule 4 is not being used.

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

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.

{Premises: the location where the Services are to be provided}

{Price: the prices as set out in the Pricing Schedule attached to this Agreement at Schedule 3}

Processor: the meaning given in the GDPR.

{Project Brief: the document specifying the key elements and scope of the project/Services including but not limited to the key deliverables against which the Client will measure the Consultant Company's success, attached hereto at Schedule 1}

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.

Relevant Policies: the Client's policies outlined in Schedule 5 which the Consultant Company {,and} the Individual {and any Substitute} shall adhere to.

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

Services: the services described in Schedule 1.

{Specification: the document specifying the key elements and scope of the project/Services including but not limited to the key deliverables against which the Client will measure the Consultant Company's success, attached hereto at Schedule 1}

{**Substitute:** a substitute for the Individual appointed under the terms of Clause 3.3.}

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.
- 1.7 Where there is any conflict or inconsistency between the provisions of the Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
 - (a) The clauses of the Agreement
 - (b) Schedule 1 to this Agreement
 - (c) the remaining schedules to this Agreement other than Schedule 2
 - (d) Schedule 2 to this Agreement

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 continue unless and until terminated:
- (a) upon natural expiry {on INSERT DATE}; or
 - (b) by either party giving to the other not less than {NUMBER} weeks' prior written notice; or
 - (c) As provided by Clause 11 of this Agreement
- 2.3 {Subject to satisfactory performance by the Consultant Company during the Engagement, the Client may wish to extend the Agreement for a further period of up to **two years** year{s}. The Client may approach the Consultant Company if it wishes to do so before the end of the Engagement. The agreed terms and conditions in this Agreement will apply (subject to any variation pursuant to Clause 21) throughout any such Extension Period.}

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.

- 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.}
- 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 Company shall procure that the Individual shall comply with the Client's policies on {social media} {use of information and communication systems} {anti-harassment and bullying} {no smoking} {dress code} {substance misuse} {sustainable procurement} {Counter-Terrorism, Anti-Slavery, Anti-Bribery} {and Equality and Diversity} {OTHER RELEVANT POLICY}.
- 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;}

comply with the Client's Ethics and Anti-bribery and Anti-corruption Policies (annexed to this agreement at Schedule 5) and {RELEVANT INDUSTRY CODE ON ANTI-BRIBERY}{annexed to this agreement at Schedule {NUMBER}}, in each case as the Client {or the relevant industry body} may update them from time to time (**Relevant Policies**);

- (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{, 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

Commented [n2]: Create document link to Schedule 5

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 {or providing goods} in connection with this agreement comply with this Clause 3.10; and
- (g) within {NUMBER} 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). 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 {total} {maximum} fee of £{AMOUNT} per {hour **OR** day} {exclusive **OR** inclusive} of VAT. {If the Client requires additional work to be undertaken outside the scope of the Services, then the Client shall pay the Consultant Company an additional fee in line with the day rates outlined in the Pricing Schedule attached at Schedule 3.} 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.

In consideration of the provision of the Services to the satisfaction of the Client, the Client shall pay each undisputed invoice submitted by the Consultant Company in accordance with Clause4.¹

- 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.

Payment in full or in part of the fees claimed under Clause4

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 .
- 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

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

¹ Standard payment within thirty (30) days
WLWA-WLW01-03517

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

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 4 **(Part A)** by the Client and may not be determined by the Consultant Company **OR** The Parties acknowledge that for the purposes of the Data Protection Legislation, the Parties are Joint Controllers and the Consultant Company may act as a Processor on behalf of the Client. When the Consultant Company is acting as a Processor on behalf of the Client, the Parties acknowledge that the only processing that the Consultant Company is authorised to do is listed in Schedule 4 **(Part A)** by the Client and may not be determined by the Consultant Company. The Parties shall enter into a Joint Controller Agreement in the form attached at **Schedule 4 Part B** in accordance with GDPR Article 26, in replacement of Clauses 8.2-18.14 for the Personal Data under Joint Control.

8.1

Commented [n3]: Delete as applicable.

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 4, 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 4);
 - (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 thirty (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 thirty (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.
- 8.15 8.15 Following the UK's departure from the European Union then on exit day:

- (a) references to the GDPR shall be read as references to the UK GDPR to reflect the fact that compliance with the UK GDPR is now required.
- (b) the Parties shall update their privacy notices to reflect the change to compliance with the UK GDPR and will consider whether any further amendments are required to their privacy notices.

8.16 Following the UK's departure from the European Union, then:

- (a) the Consultant Company shall take steps, and ensure that any Sub-Processor takes steps, to ensure that all necessary safeguards are in place to enable the Personal Data to continue to flow from the European Economic Area (EEA) to the UK and will indemnify the Client against any damage or loss caused by any disruption to the flow of Personal Data caused by the Consultant Company's actions or omissions or the actions or omissions of their Sub-Processors.
- (b) the Consultant Company shall comply with any further written instructions from the Client in relation to the storage of data held in or outside of the UK.
- (c) the Consultant Company shall provide a copy of their procedures for safeguarding the Personal Data to the Client.

(The Parties will enter into a Data Sharing Agreement as follows:)

Commented [n4]: To delete Clause 8.17 if not used.

8.17

The Consultant Company agrees to sign the necessary Data Sharing Agreement, with the Client regarding the Services and to comply with its terms, **(the agreed form of which is attached at Schedule {X})**.

Commented [n5]: To include if agreed form of DSA is attached. To update Contents Page appropriately.

8.17.1

8.17.2 The Consultant Company also agrees to have sufficient Data Sharing Agreements in place when engaging in information sharing with other relevant services or with external parties. No data is to be passed from the Consultant Company to any Sub-Contractor or other service provider without an agreed and signed Data Processing Agreement in place.

8.17.3 The Consultant Company shall supply to the Client such information and assistance as may be reasonably requested as being necessary to enable the Client to perform their own obligations in relation to the Services.

8.17.4 The Consultant Company shall treat all Confidential Information belonging to the Client as confidential and shall not disclose any Confidential Information belonging to the Client to any other person without the Client's consent, except to such persons and to such extent as may be necessary for the performance of the Consultant Company's obligations or as required to comply with legal obligations.

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.

Commented [n6]: Please liaise with the Insurance Team to obtain acceptable values.

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 equivalent to:
- (a) Public Liability Employers' Liability Professional Indemnity Insurance to the value of {INSERT VALUE} limit per occurrence
- 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 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. BUSINESS CONTINUITY AND DISASTER RECOVERY

- 11.1 The Consultant Company acknowledges that the Client has business continuity and emergency planning obligations pursuant to the requirements of the Civil Contingencies Act 2004.
- 11.2 The Consultant Company shall provide to the Client on the Commencement Date{, or within {30/60/90} days of the Commencement Date,} draft documented arrangements for the Client's approval (such approval not to be unreasonably withheld) that meet good practice guidelines to effectively protect the Client from the consequences of a business interruption or series of business interruptions to the provision of the Services (the "**{Business Continuity Plan/Disaster Recovery Plan}**"). The {Business Continuity/Disaster Recovery} Plan shall, as a minimum, set out details of the response to, management of recovery from and continuity strategies that will be implemented when a business interruption or series of business interruptions to the provision of the Services occurs.
- 11.3 The Consultant Company shall ensure that, as a minimum, the {Business Continuity/Disaster Recovery} Plan:
- Fully integrates with the Client's own {disaster recovery} {and business continuity} arrangements and policies;
 - Includes detailed plans for restoring and maintaining the provision of the Services depending on the nature of the disruptive incident;
 - Includes detailed plans for restoring, adapting and/or maintaining the provision of the Services in the event of a Coronavirus Event;

- Includes plans for maintaining regular communication with the Client during a business interruption or series of business interruptions; and
 - Includes an IT Disaster Recovery Plan
- 11.4 Following the notification of a Disaster in respect of any of the Services, the Consultant Company shall:
- invoke the Disaster Recovery Plan;
 - continue to provide the affected Services to the Client in accordance with the {Business Continuity/Disaster Recovery} Plan; and
 - restore the affected Services to normal within the period laid out in the {Business Continuity/Disaster Recovery} Plan.
- 11.5 To the extent that the Consultant Company complies fully with the provisions of this Clause 11 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this Agreement on the part of the Consultant Company), the KPIs to which the affected Services are to be provided during the continuation of the Disaster shall be the KPIs set out in {Business Continuity/Disaster Recovery} Plan or (if none) the best mutually agreed service levels which are reasonably achievable in the circumstances.
- 11.6 The Consultant Company shall provide an annual update to the Client of the {Business Continuity/Disaster Recovery} Plan ensuring compliance at all times with this clause.
- 11.7 The Client reserves the right to attend any business continuity tests or exercises undertaken by the Consultant Company and to invite the Consultant Company to any relevant business continuity exercises held by the Client.
- 11.8 The Client reserves the right to audit the {Business Continuity/Disaster Recovery} Plan.

12. FORCE MAJEURE

- 12.1 Subject to the remaining provisions of this Clause 12, neither party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such non-performance is due to a Force Majeure Event.

- 12.2 In the event that either party is delayed or prevented from performing its obligations under this Agreement by a Force Majeure Event, such party shall:
- a. give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - b. use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
 - c. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 12.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 12.4 The Consultant Company cannot claim relief if the Force Majeure Event is one where a reasonable Consultant Company should have foreseen and provided for the cause in question.
- 12.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement. Where the Consultant Company is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 12.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

- 12.7 The Client may, during the continuance of any Force Majeure Event, terminate this Agreement by written notice to the Consultant Company if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than {NUMBER} Working Days.

13. CORONAVIRUS

- 13.1 {Notwithstanding the ongoing and foreseeable nature of the global Coronavirus pandemic,} subject to the remaining provisions of the Clause 13, neither party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such non-performance is due to a Coronavirus Event.

- 13.2 In the event that either party is delayed or prevented from performing its obligations under this Agreement by a Coronavirus Event, such party shall:

- i. give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- ii. use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement, including but not limited to remote working and all other reasonable measures; and
- iii. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

- 13.3 The Consultant Company cannot claim relief from the performance of any of its obligations under the Agreement which are unaffected by a Coronavirus Event, and can only claim partial relief from performance of obligations which are only partially affected by a Coronavirus Event, and shall therefore remain liable for performance or partial performance as appropriate of all obligations under the Agreement that are reasonably achievable despite the existence of a Coronavirus Event. {For the avoidance of doubt, a Coronavirus Event shall not entitle the Consultant

Company to receive any increase in the Price or increase in any other fee associated with this Agreement.}

- 13.4 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Coronavirus Event and to facilitate the continued performance of this Agreement.
- 13.5 Where the Consultant Company is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Coronavirus Event in accordance with Best Industry Practice.
- 13.6 The affected party shall notify the other party as soon as practicable after the Coronavirus Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Coronavirus Event unless agreed otherwise by the parties.
- 13.7 The Client may, during the continuance of any Coronavirus Event, terminate this Agreement by written notice to the Consultant Company if the Coronavirus Event affects all or a substantial part of the Services and continues for more than sixty (60) Working Days or within any other reasonable timeframe reasonably stipulated by the Client.
- 13.8 Where the Client has the right to terminate this Agreement under Clause 13.7 above it may, prior to or instead of terminating the whole of this Agreement, serve a notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the Coronavirus Event.
- 13.9 If this Agreement is terminated by the Client under this clause such termination shall be at no loss or cost to the Client and the Client shall not be liable to the Consultant Company for any losses or costs which the Consultant Company may suffer as a result of any such termination

including, for the avoidance of any doubt, any claim for loss and expense or loss of business or profits

14. BREXIT

- 14.1 If the United Kingdom withdraws from the EU and the terms of such withdrawal have a direct and significant material adverse effect on the activities contemplated under this Agreement or the rights or obligations of either Party hereunder, the Parties shall negotiate in good faith to agree whether or not an adjustment or amendment to the terms hereof are necessary to preserve each Party's rights and obligations hereunder as such rights and obligations were reasonably contemplated by the Parties as of the Commencement Date. For clarity, a withdrawal from the EU by the United Kingdom shall not constitute a Force Majeure.

15. DISPUTE RESOLUTION

- 15.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then {except as expressly provided in this Agreement,} the parties shall follow the procedure set out in this Clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
 - (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within {thirty (30)} days of service of the Dispute Notice, the Dispute shall be referred to the Client's {SENIOR OFFICER TITLE} and the Consultant Company's {SENIOR OFFICER TITLE} who shall attempt in good faith to resolve it; and
 - (c) if the Client's {SENIOR OFFICER TITLE} and the Consultant Company's {SENIOR OFFICER TITLE} are for any reason unable to resolve the Dispute within {thirty (30)} days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice

should be sent to CEDR Solve. The mediation will start not later than {NUMBER} days after the date of the ADR notice.

- 15.2 The commencement of mediation shall not prevent the parties commencing or continuing {court or arbitration} proceedings in relation to the Dispute under Clause 24 which Clause shall apply at all times.

16. TERMINATION

- 16.1 Pursuant to the provisions of Clause 2.2(c), 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

{NUMBER} days in any {52-week} consecutive period and the Consultant Company has made no reasonable endeavours to offer any {Substitute or} remedy;

- (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.

16.2 The rights of the Client under Clause 16.1 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.

17. OBLIGATIONS ON TERMINATION

17.1 On the Termination Date the Consultant Company shall, and shall procure that the Individual shall:

- (a) immediately deliver to the Client all Client Property which is in its or his possession or under its or his control;
- (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 17.

18. STATUS

- 18.1 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.
- 18.2 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.
- 18.3 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.
- 18.4 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.

19. NOTICES

- 19.1 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 fax to its main fax number.
- (c) Sent by email to:

For the Client: {TO INSERT EMAIL}

(i)

For the Consultant Company {TO INSERT EMAIL}}

(ii)

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

- (a) if delivered by hand, on signature of a delivery receipt {or 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 {or at the time recorded by the delivery service};
- (c) if sent by fax, at {9.00 am} on the next Business Day after transmission;
- (d) {if sent by email at the time of successful transmission except where the sender receives a failed delivery or similar message following transmission}

19.3 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.

20. ENTIRE AGREEMENT

20.1 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.

20.2 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.

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

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

21. VARIATION

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).

22. COUNTERPARTS

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.

23. THIRD PARTY RIGHTS

23.1 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.

23.2 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.

24. GOVERNING LAW

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.

25. JURISDICTION

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.

IN WITNESS of which the Parties have signed this Agreement the day and year first before written.

Commented [n7]: To use this execution for contracts of value <£100k

SIGNED for and on behalf of the
WEST LONDON WASTE AUTHORITY

Signature:

Name:.....

Position:

SIGNED for and on behalf of the

Signature:

Name:.....

Position:

IN WITNESS whereof the Parties have **executed and delivered this Contract as a deed** the day and year first before written.

Commented [n8]: To use this execution for contracts of value >£100k and if otherwise deemed necessary

Executed as a deed by **WEST LONDON WASTE AUTHORITY** by affixing its Common Seal hereto in the presence of:

.....
Authorised Signatory

Executed as a deed by 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

Witness signature:

.....
Director Name (BLOCK CAPITALS)

Witness name:

Address:

.....
Director Signature

.....

.....
Director Name (BLOCK CAPITALS)

Schedule 1

Services

Commented [BE9]: Insert details of services to be provided

Schedule 2

Consultant Company's Tender Submission

WLWA-WLW01-03517

Schedule 3

Pricing Schedule

WLWA-WLW01-03517

Schedule 4 Processing, Personal Data and Data Subjects

PART A

1. The Consultant Company shall comply with any further written instructions with respect to processing by the Client.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing ²	{The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Consultant Company is the Processor in accordance with Clause 8.1 OR the Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of {Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties} }
Duration of the processing ³	
Nature and purposes of the processing ⁴	
Type of Personal Data ⁵	

² This should be a high level, short description of what the processing is about i.e. its subject matter.

³ Clearly set out the duration of the processing including dates.

⁴ Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc.

⁵ Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.

Categories of Data Subject ⁶	
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data ⁷	

⁶ Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.

⁷ Describe how long the data will be retained for, how it will be returned or destroyed.

{PART B}

{JOINT CONTROLLER AGREEMENT}

Commented [n10]: To delete if Not Used.

BACKGROUND

The following Joint Controller Agreement between the Parties reflects the arrangements that they have agreed to put in place to facilitate the sharing of Personal Data relating to the **{ }** between the Parties acting as Joint Controllers and explains the Agreed Purposes for which that Personal Data may be used.

Commented [n11]: Insert subject of services

1. ROLES AND RESPONSIBILITIES

1.1 Each party shall nominate a single point of contact within their organisation who can be contacted in respect of queries or complaints in relation to this Joint Controller Agreement or any data protection issues.

1.2 The Client's Data Protection Officer can be contacted at **{ }**

Commented [n12]: Provide email address.

1.3 The Consultant Company's Data Protection contact can be contacted at **{ }**.

Commented [n13]: Provide email address.

2. AGREED PURPOSES

2.1 The Parties consider the sharing of Personal Data is necessary to support the following agreed purposes of the Parties (hereafter referred to as "the Agreed Purposes"):

- a) **{ }** processing for the purpose of performing a task in the public interest or for the exercise of the Client's official functions, and the task or function has a clear basis in law pursued by the Client namely **{ }**;
- b) to enable the Client to **{ }**;

Commented [n14]: Identify how processing will meet public interest requirement if this is a lawful basis relied on. If this does not apply then will need to consider other applicable lawful grounds for processing (for example if consent has been given by the individual).

2.2 As such the following types of personal data may be collected: **{ }**

Commented [n15]: List types of personal data which will be collected, i.e name/address of individuals

2.3 The data subjects will be: **{ }**

Commented [n16]: Provide details of data subjects.

3. DATA PROTECTION OBLIGATIONS

3.1 Each party acknowledges that the Controller (as the discloser of Personal Data) will, as necessary, disclose to the other Controller (as the Personal Data recipient) Personal Data collected by the Controller for the Agreed Purposes.

3.2 Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation in the performance of its obligations under this

Agreement and any other agreement between the parties which pertains to Personal Data ("Relevant Agreements"), and any material breach of the Data Protection Legislation in respect of a Relevant Agreement by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this Agreement with immediate effect.

3.3 Each party shall:

- a) be responsible for the creation and publication of their own privacy notices;
- b) ensure that such privacy notices are clear and provide sufficient information to Data Subjects in order for them to understand what of their Personal Data is being shared between the Parties, the circumstances in which it will be shared, the purposes for the data sharing and either the identity with whom the data is shared or a description of the type of organisation that will receive the Personal Data, as well as how Data Subjects can make a Data Subject Access Request;
- c) ensure it has all necessary notices in place to enable lawful transfer of the Personal Data to any Permitted Recipients for the Agreed Purposes;
- d) give full information to any data subject whose Personal Data may be processed under this Agreement of the nature of such processing. This includes giving notice that, on the termination of this Agreement, Personal Data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors or assignees. Such information shall be contained within the Privacy Notice of each party;
- e) process the Personal Data only for the Agreed Purposes; not disclose or allow access to the Personal Data to anyone other than the Permitted Recipients;
- f) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement;
- g) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, personal data;
- h) not transfer any Personal Data outside the EEA.

3.4 *Mutual Assistance*

3.4.1 Each party shall provide reasonable assistance to the other in complying with all applicable requirements of the Data Protection Legislation insofar as they pertain to Relevant Agreements. In particular, each party shall:

- a) consult with the other party about any notices given to data subjects in relation to the shared Personal Data;
- b) promptly inform the other party about the receipt of any Data Subject Access Requests;
- c) provide the other party with reasonable assistance in complying with any data subject access request;
- d) not disclose or release any shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;

- e) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities and regulators;
- f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- g) use compatible technology for the processing of shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- h) maintain complete, secure and accurate records and information to demonstrate its compliance with this agreement; and
- i) provide the other party with contact details of at least one employee as point of contact and responsible officer for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

4. DATA RETENTION

- 4.1 The parties shall not retain or process shared Personal Data for longer than is necessary to carry out the Agreed Purposes.
- 4.2 The parties shall ensure that details of their respective retention schedules are publically available.
- 4.3 On termination of this Agreement for whatever reason the Consultant Company will return or destroy any shared data unless they are required to keep the data by legislation.

5. INDEMNITY

- 5.1 Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including any direct or indirect losses and all interest, penalties and reasonable legal costs (calculated on a full indemnity basis and all other reasonable professional costs and expenses), but not including consequential losses, loss of profit or loss of reputation) suffered or incurred by the indemnified party caused by the breach of Data Protection Legislation in respect of a Relevant Agreement by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it and reasonable assistance in dealing with the claim.

6. REVIEW

- 6.1 The effectiveness of the Agreement shall be reviewed alongside any contractual renewal between the Parties.
- 6.2 In the event of a data breach this Agreement shall be reviewed immediately to determine what, if any, amendments are required to ensure that no further breaches take place

IN WITNESS of which the Parties have signed this Agreement the day and year first before written.

SIGNED for and on behalf of the
WEST LONDON WASTE AUTHORITY

Signature:

Name:

Position:

SIGNED for and on behalf of the

Signature:

Name:

Position:

5 Relevant Policies

Schedule 5 Relevant Policies

Commented [n17]:
*Insert relevant policies for Consultant Company to comply with
- This should be done for each Consultancy Agreement on a
case by case basis.*