

This Appointment Agreement is made the _____ day of _____ 2024 between The Borough Council of Kings Lynn and West Norfolk of Kings Court, Chapel Street, Kings Lynn, Norfolk PE30 1EX (hereinafter called "the Council") of the one part and of Registered Company No.(XXXX) (hereinafter called "the Consultant") of the other part

WHEREAS:

1. The Council has by an Invitation to Tender dated _____ 2024 invited Tenders for Consultants to supply Consultancy Services, "the Services"
2. The Consultant has submitted a Tender dated _____ 2024 to provide the Services as described in the Invitation to Tender and the Council has accepted the Tender and wishes to appoint the Consultant to provide the Services on the terms and conditions contained therein
3. The following documents which have been signed on behalf of the parties hereto form part of this Agreement:
 - 3.1 Invitation to Tender, including the specification
 - 3.2 Tender Clarifications
 - 3.3 Contractor's Tender Response
 - 3.4 Correspondence between the Council and the Contractor
 - 3.5 The Acceptance of Tender
 - 3.6 Contractor's Insurance Documentation together called "the Contract Documents"

4. Definitions

- 4.1 'The Project Officer' shall mean the Council's Manager.

NOW THIS DEED WITNESSETH as follows:

1. Consultants obligation

- 1.1 The Consultant will provide the Services in accordance with the Contract Documents and shall exercise reasonable skill and care in the performance of the Services.
- 1.2 Where the provision of the Services involves the supervision of a Contract on behalf of the Council the Consultant shall in addition:
 - 1.2.1 comply with the Council's Standing Orders Relating to Contracts as though he were a duly appointed Officer of the Council
 - 1.2.2 at any time during the carrying out of the Contract, produce to the appropriate Chief Officer or the External or Internal Auditor of the Council on request, all the records maintained by him in relation to the Contract
 - 1.2.3 on completion of the Contract, transmit all such records to the appropriate Executive Director of the Council as required to be returned by the Executive Director

2. Indemnity/Insurance

- 2.1 The Consultant will indemnify and keep indemnified the Council from and against any and all loss damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by the Council, up to a total value of

£1,000,000 arising out of or in the course of or caused by the provision of the Services except to the extent that the same are due to any act or neglect of the Council or any person for whom the Council is responsible.

2.2 Without prejudice to his liability to indemnify the Council the Consultant shall take out and maintain insurance which shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and shall take out and maintain insurance in respect of Public Liability for injury or damage to any property real or personal in sum of not less than £5,000,000 for any one occurrence or series of occurrences arising out of one event.

2.3 The Consultant shall maintain Professional Indemnity insurance covering (without limitation) all its liabilities hereunder whether for breach of contract, negligence or otherwise in respect of defects or insufficiency in design upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom in an amount of not less than £2,000,000 for any one occurrence or series occurrences arising out of any one event.

2.4 The Consultant shall produce such evidence as the Council may reasonably require that the insurances referred to in Clauses 2.2 and 2.3 above have been taken out and are in force at all material times.

3. Payment

3.1 The Council will pay to the Consultant such sums as are due, in accordance with the Contract Documents within 30 days of receipt of a valid invoice.

4. Contract Period

4.1 The contract period shall commence on and shall be completed by

5. Extension

5.1 The Council may at its sole discretion, offer to the Consultant an extension, or series of extensions, to carry out further work on the same project. Any extension offer will be made in writing and the Consultant will respond to any such offer in writing, either accepting or declining, within 28 days of receipt of the offer. If the Consultant fails to respond within that time period, this will be deemed to be a rejection of the offer.

6. Liquidated damages

6.1 If the provision of the Services is not completed by the date specified in Clause 4.1 above the Consultant shall pay or allow to the Council liquidated damages at a rate equal to any direct cost incurred by the Council as a result of the non or delayed provision of the Services.

7. Termination

7.1 The Council may by notice in writing forthwith determine all or part of the Contract:

7.1.1 If the Consultant without reasonable cause makes default by failing to proceed diligently with the provision of the Services the Council may by notice in writing to the Consultant determine the employment of the Consultant under this Contract.

7.1.2 If the Council shall reasonably decide that the Consultant is suffering from financial difficulties which affect or threaten to affect the performance by the Consultant of his obligations hereunder.

7.1.3 If the Consultant makes a composition or arrangement with his creditors or becomes bankrupt or being a Company makes a proposal for a voluntary

arrangement for a composition of debts or scheme of arrangement or has a provisional liquidator appointed or has a winding up order made or passes a resolution for voluntary winding up (except for the purposes of amalgamation or reconstruction) or has an administrator or an administrative receiver appointed.

7.2 Upon determination of the employment of the Consultant under clause 7.1 above the Council may recover from the Consultant the additional cost to him of completing the Services any expenses properly incurred by the Council as a result of and any direct loss and/or damage caused to the Council by the determination.

8. Specification

8.1 The Consultant shall be deemed to have satisfied himself as to the accuracy, nature and extent of the Services required by the Specification before the execution of the Contract.

8.2 The Consultant shall be deemed to have satisfied himself before submitting his Tender as to the correctness and sufficiency of his Tender price which shall (except insofar as it is otherwise provided in the Contract) cover all his obligations under the Contract.

8.3 If the Consultant finds a discrepancy, error, omission or misstatement in the documents he shall immediately refer the same in writing to the Project Officer.

8.4 Any such discrepancy, error, omission or misstatement shall not vitiate the agreement nor shall it release the Consultant from the completion of the whole or any part of the Services required by the Contract. The Project Officer shall in all such instances issue instructions as to such discrepancies, errors, omissions and misstatements.

8.5 The Specification describes as far as practicable the whole of the Services to be provided but the Consultant is responsible for ensuring that all these and incidental Services are completed in the proper manner as generally accepted for his particular profession and in particular in accordance with the appropriate Standards and/ or Codes of Practice

9. Alterations to Contract Documents

9.1 No omission from, addition to or variation to the Tender Documentation and/ or the Contract shall be valid or of any effect unless it is agreed in writing and signed by the Project Officer and by a duly authorised representative of the Consultant.

9.2 Save for an omission, addition or variation agreed pursuant to Clause 9.1 hereof any provision inconsistent with the Contract contained in any other document or in any oral agreement is agreed to be void and of no effect.

10. Whole agreement

10.1 Each party acknowledges that this Contract contains the whole agreement between the parties and that it has not relied upon any oral or written representation made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it.

11. Supersedes prior agreement

11.1 This Agreement supersedes any prior Agreement between the parties whether written or oral.

12. Interpretation

12.1 In the Contract, unless the contrary appears:

12.1.1 A reference to an Act of Parliament or any Order, Rule, Regulation, Statutory Instrument, Directive or the like (including those of the European

Community) shall include a reference to any amendment or re-enactment of the same made prior to and during the Contract Period and will automatically include any such Act, Order, Rule Regulation, Statutory Instrument, Directive or the like enacted during the Contract Period which impinges upon the Works and/ or the Contract Standard.

12.1.2 Words importing the masculine include the feminine, words in the singular include the plural, and words in the plural include the singular.

13. Notices

13.1 No Notice to be served upon the Consultant shall be valid and effective unless it is delivered by hand, facsimile transmission or sent by Recorded, Registered or Special Delivery Post to the Consultants principal place of business which unless notified to the Council in writing otherwise shall be assumed to be the address the Consultant detailed in the Contract.

13.2 No Notice to be served upon the Council shall be valid or effective unless it is delivered by hand, facsimile transmission or sent by Recorded, Registered or Special Delivery Post to the Legal Services Manager.

13.3 Any Notice to be served shall be deemed to be given on the date that it is delivered by hand or sent by facsimile transmission or is sent by Recorded, Registered or Special Delivery Post on the date when it would be delivered in the ordinary course of Post.

14. Recovery of sums due

14.1 Wherever under this Contract any sum of money shall be properly recoverable from or payable by the Consultant, the same may be deducted from any sum then due, or which at any time thereafter may become due to the Consultant under this Contract or under any other Contract with the Council.

15. Waiver

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

16. No assignment or sub-contracting

16.1 The Consultant shall not assign or sub-contract any of its rights or duties under this Agreement without the consent in writing of the Council.

16.2 The Consultant may not substitute any goods or materials specified within the Contract Documents for any others without the consent in writing of the Council.

16.3 If the Consultant has without the previous consent in writing of the Council sub-let any part of the Services the Council may determine this Contract notwithstanding that the Consultant may have subsequently ceased to employ the sub-contractor.

16.4 It shall be a condition of any consent to sub-let any part of the contract that:

16.4.1 the employment of the sub-Contractor shall cease immediately upon the determination (for whatever reason) of the Consultant's employment under this contract

16.4.2 in the event that the Consultant, in accordance with the terms of this Agreement, enters into a supply contract or a sub-contract in connection with this Agreement, the Consultant shall ensure that a term is included in the supply contract or sub-contract which requires the Consultant to pay all sums due thereunder to the sub-contractor within a specified period, not to

- exceed thirty (30) days, from the date of receipt of a valid invoice as defined by the terms of the supply contract or sub-contract (as appropriate).
- 16.4.3 in the case of a local supply contract or sub-contract entered into in connection with this Agreement – where the local supplier or sub-contractor is deemed to be a business with headquarters within the Council’s borough boundary, the Consultant will use their best endeavours to ensure that payment to such a supplier/sub-contractor shall be within a period not to exceed ten (10) days, from the date of receipt of a valid invoice as defined by the terms of the supply contract or sub-contract (as appropriate).
- 17. Prevention of Corruption**
- 17.1 The Council may be entitled to cancel this Contract and to recover from the Consultant the amount of any loss resulting from such cancellation if:
- 17.1.1 the Consultant shall, in the opinion of the Council, have offered or given or agreed to give to any person gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to this Contract or any other contract, whether with the Council or anyone else; or
- 17.1.2 the like acts shall have been done by any person employed by the Consultant or acting on his behalf whether with or without the knowledge of the Consultant; or
- 17.1.3 in relation to any contract with the Council or anyone else, the Consultant or any person employed by him or acting on his behalf and whether with or without his knowledge, shall have committed any offence under the Bribery Act 2010 or under sub-section 2 of section 117 of the Local Government Act 1972.
- 18. Duty of Care**
- 18.1 The Consultant shall exercise reasonable skill and care in the performance of the Services.
- 19. Observance of Statutory Requirements**
- 19.1 The Consultant shall comply with all statutes, orders, regulations or bye-laws applicable to the performance of the Contract and indemnify the Council against any losses claims liabilities costs expenses proceedings or otherwise as a result of the Consultants non compliance with the same.
- 20. Project Officer**
- 20.1 The Project Officer or his authorised deputy shall in accordance with the Contract but not further or otherwise have power and authority to issue reasonable instructions and directions on any matter in connection with the proper performance of the Services but subject to the terms of the Contract and the Consultant shall carry out and be bound by the same. The Project Officer shall not exercise any functions; rights or powers beyond those conferred by the Contract.
- 21. Confidentiality**
- 21.1 Save for information already in the public domain or the Consultant’s knowledge the Consultant and the Consultant’s staff shall treat as confidential and shall not disclose to any person other than a person authorised by the Council, any written and confidential information acquired by the Consultant or the Consultant’s staffing or in connection with the provision of the Services concerning the Council’s Premises, the Council, its staff or its procedures.
- 22. Freedom of Information**

- 22.1 The Consultant acknowledges that the Council has legal responsibilities to make information available under the Freedom of Information Act 2000 (“the Act”).
- 22.2 The Consultant shall give reasonable assistance to the Council to comply with the Act.
- 22.3 In particular, the Consultant shall supply all such information and records to the Council (together with reasonable assistance to locate the same) which are needed by the Council to comply with its obligations under the Act.
- 22.4 The Council shall have the discretion to disclose any information which is the subject of Agreement to any person who makes a request under the Act and which, in the opinion of the Council, it has to disclose to discharge its responsibilities under the Act.
- 22.5 When exercising its right under Clause 22.4 above, the Council shall consult the Consultant (and may take account of any reasonable suggestions made by it).
- 22.6 The Consultant shall not raise any additional charge to the Council in relation to complying with this clause.
- 23. Data Protection**
- 23.1 Data Protection Legislation: (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.
- 23.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 23 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 23.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the data controller and the Consultant is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 23.4 Without prejudice to the generality of Clause 23.2, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data to the Consultant for the duration and purposes of this agreement.
- 23.5 Without prejudice to the generality of Clause 23.2, the Consultant shall, in relation to any Personal Data processed in connection with the performance by the Consultant of its obligations under this agreement:
- 23.5.1 process that Personal Data only on the written instructions of the Council unless the Consultant is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Consultant to process Personal Data (Applicable Laws). Where the Consultant is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Consultant shall promptly notify the Council of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Consultant from so notifying the Council;
- 23.5.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental

loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that the availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 23.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - 23.5.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - 23.5.4.1 the Council or the Consultant has provided appropriate safeguards in relation to the transfer;
 - 23.5.4.2 the data subject has enforceable rights and effective legal remedies;
 - 23.5.4.3 the Consultant complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - 23.5.4.4 the Consultant complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
 - 23.5.5 assist the Council, at the Council's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultation with supervisory authorities or regulators;
 - 23.5.6 notify the Council without undue delay on becoming aware of a Personal Data Breach;
 - 23.5.7 at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - 23.5.8 maintain complete and accurate records and information to demonstrate its compliance with this Clause 23.
- 23.6 The Council does not consent to the Consultant appointing any third party processor of Personal Data under this agreement

24. Contracts (Rights of Third Parties) Act 1999

- 24.1 For the avoidance of doubt, nothing in this Contract confers or is intended to confer on any third party and benefit or the right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999

25. Late Payment

- 25.1 The Late Payments of Commercial Debts (Interest) Act 1998 and the Regulations thereunder shall apply to the Contract unless excluded under the provision therefore or by alternative provisions in the Tender Documents.

26. Force Majeure

- 26.1 Neither party shall be held to be in breach of Contract in respect of any failure to fulfil his obligations pursuant to the Contract resulting from force majeure. Each party will as soon as reasonably practicable notify the other in writing of the occurrence of such force majeure as they become known.

26.2 Force Majeure is acknowledged by the parties to be any circumstances beyond the reasonable control of either party including without prejudice to the generality of the foregoing fire, flood, Act of God, riot civil disturbance, industrial disputes where neither party is a direct participant, war or sabotage the coming in force of any statutory instrument regulation or by-law of the Government or any competent authority rendering the continued performance of the Contract illegal or impossible

27. Arbitration

27.1 All disputes between the parties arising out of or connected with this Contract or the performance of the Services by the Consultant may if the parties agree be referred to an Arbitrator to be agreed upon by the parties or in default of such agreement to be nominated by the President of the Institute of Arbitrators or a person appointed by him.

27.2 The Arbitrator shall be entitled to make such decision or award as he thinks just and equitable having regard to the circumstances then existing, the cost of such arbitration to follow the event or in the event of neither party succeeding to be apportioned between the parties by the Arbitrator in such proportions as he in his absolute discretion thinks fit.

27.3 Any award or decision of such Arbitrator shall be final and binding on the parties hereto.

28. Law

28.1 This Contract shall be governed by the laws of England and Wales, and the parties agree to submit to the non-exclusive jurisdiction of the English Courts

29. Whistleblowing Policy

29.1 The Consultant acknowledges that they have received a copy of the Council's Whistleblowing Policy and acknowledges their responsibilities as a supplier of Services to the Council under this policy

30. Copyright

30.1 Upon completion of the Services the copyright of all documents and reports provided by the Consultant in connection with the Services shall be passed to the Council.

