

This Agreement ("the Contract") 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 _____ (Registered No. _____) whose registered address is..... (hereinafter called "the Contractor") of the other part

WHEREAS:-

- 1. The Council has by an Invitation to Tender dated _____ 2024 invited Tenders for Contractors to supply Services, "the Services".
- 2. The Contractor 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 Contractor 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"
 - 3.7 Minutes of Interview

4. Definitions

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

NOW THIS DEED WITNESSETH as follows:-

1. Contractors obligation

- 1.1 The Contractor 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 The Contractor will ensure where the performance of the Contract or any part thereof is carried out by a third party that such third party complies with such provisions of this Contract as shall be reasonable for them to comply with.
 - 1.2.1 for the avoidance of doubt and without limit to the generality of the forgoing all third parties engaged by the Contractor shall comply in full with Clauses 1.1,19, 20, 22, 23 and 24 as though they were the Contractor.
- 1.3 Nothing in this clause shall be deemed to have waived the obligations of Clause 18.

2. Indemnity/Insurance

- 2.1 The Contractor 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 Contractor 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 of occurrences arising out of any one event.

2.4 The Contractor 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 Contractor 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 provision of the services will be commenced on and will be completed by

5. Liquidated damages

5.1 If the provision of the Services is not completed by the dates set out in Clause 4 above the Contractor shall pay or allow to the Employer liquidated damages at the rate of

6. Extension of Contract

6.1 The Council may at its sole discretion, by written notice during a period between 1 and 9 months prior to the expiry date, offer to the contractor an extension of up to XX year(s). The Contractor will respond to any such offer in writing, either accepting or declining, within 28 days of receipt of the offer. If the Contractor fails to respond within that time period this will be deemed to be a rejection of the offer.

7. Variation

7.1 The Parties may, without invalidating this Contract and subject to compliance with the Council's Contract Standing Orders, agree in writing order changes in the Services or the order or period in which they are to be carried out.

8. Failure to Provide the Services

8.1 If the Contractor shall fail to provide any part of the Services at any time the same ought to have been provided under the terms of the Contract then, without prejudice to any other right to remedy which the Council may possess in respect of such failure, the Council may: -

8.1.1 without determining this Contract in whole in or part, itself provide or procure the provision of such part of the Services until such time as the Contractor shall have proved to the reasonable satisfaction of the Project Officer that such part of the Services will once more be provided by the Contractor to the Contract Standard or, at the Council's option, until such later time as the Project Officer may specify; and

8.1.2 without determining the whole of this Contract, determine this Contract in respect of such part of the Services only and thereafter itself provide or procure the provision of such part of the Services.

8.2 The remedies of the Council under this Clause may be exercised successively in respect of any given default by the Contractor. All costs incurred by the Council in the exercise of the remedies under this Clause may be deducted from any monies due or to become due to the Contractor under the Contract or shall be recoverable as a debt.

9. Termination

- 9.1 The Council may by notice in writing to the Contractor forthwith determine all or part of the Contract:
- 9.2 Under the terms set out in Clause 8 above.
- 9.3 If the Contractor 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 Contractor determine the employment of the Contractor under this Contract.
- 9.4 If the Council shall reasonably decide that the Contractor is suffering from financial difficulties which affect or threaten to affect the performance by the Contractor of his obligations hereunder.
- 9.5 If the Contractor 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.
- 9.6 Upon determination of the employment of the Contractor under Clauses 9.2 or 9.3 or 9.4 or 9.5 above the Council may recover from the Contractor 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.

10. Specification

- 10.1 The Contractor 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.
- 10.2 The Contractor shall be deemed to have satisfied himself before submitting his Tender as to the correctness and sufficiency of his Tender which shall (except insofar as it is otherwise provided in the Contract) cover all his obligations under the Contract.
- 10.3 If the Contractor finds a discrepancy, error, omission or misstatement in the documents he shall immediately refer the same in writing to the Project Officer.
- 10.4 Any such discrepancy, error, omission or misstatement shall not vitiate the agreement nor shall it release the Contractor 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.
- 10.5 The Specification describes as far as practicable the whole of the Services to be provided but the Contractor is responsible for ensuring that all these and incidental works 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.

11. Alterations to Contract Documents

- 11.1 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 Contractor.
- 11.2 Save for an omission, addition or variation agreed pursuant to Clause 11.1 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.

12. Whole Agreement

- 12.1 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.

13. Supersedes prior Agreement

13.1 This Contract supersedes any prior agreement between the parties whether written or oral.

14. Interpretation

14.1 In the Contract, unless the contrary appears:

14.1.1 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.

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

15. Notices

15.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

15.1.1 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

15.1.2 sent by email to the address specified in this clause:

Council: monitoringofficer@west-norfolk.gov.uk

Contractor: abc@123.com

15.2 Any notice shall be deemed to have been received:

15.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

15.2.2 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; and

15.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 15.2.3, business hours means 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt.

15.3 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.

16. Recovery of sums due

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

17. Waiver

17.1 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

18. No assignment or sub-contracting

18.1 The Contractor shall not assign or sub-contract this Contract or any part thereof without the consent in writing of the Council.

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

18.3 If the Contractor 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 Contractor may have subsequently ceased to employ the sub-contractor.

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

- 18.4.1 the employment of the sub-Contractor shall cease immediately upon the determination (for whatever reason) of the Contractor's employment under this contract
- 18.4.2 in the event that the Contractor, in accordance with the terms of this Agreement, enters into a supply contract or a sub-contract in connection with this Agreement, the Contractor shall ensure that a term is included in the supply contract or sub-contract which requires the Contractor 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).
- 18.4.3 in the case of a local supply contract or sub-contract entered into in connection with this Agreement – where the local Contractor or sub-contractor is deemed to be a business with headquarters within the Council's borough boundary, the Contractor will use their best endeavours to ensure that payment to such a 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).

19. Prevention of Corruption

- 19.1 The Council shall be entitled to terminate this Contract with immediate effect and to recover from the Contractor the amount of any loss resulting from such termination if:
- 19.1.1 the Contractor shall, in the opinion of the Council, have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to this Contract or any other contract, whether with the Council or anyone else; or
- 19.1.2 the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without his knowledge); or
- 19.1.3 in relation to any contract whether with the Council or anyone else, the Contractor 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 Section 117 (2) of the Local Government Act 1972
- 19.1.4 the Contractor when tendering fixed or adjusted the amount of the tender under or in accordance with any agreement or arrangement with any other person or before the hours specified for the return of tenders
- 19.1.4.1 communicated to a person other than the Council the amount or the approximate amount of its tender (except where the disclosure in confidence of the approximate amount of its tender was essential to obtain insurance premium quotations required for the preparation of its tender)
- 19.1.4.2 entered into an agreement with any other person whereby that other person would refrain from tendering or as to the amount of any tender to be submitted
- 19.1.4.3 offered or paid or gave or agreed to give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender any act or thing of the sort described above.

20. Observance of Statutory Requirements

- 20.1 The Contractor 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 Contractors non compliance with the same.

21. The Project Officer

- 21.1 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 Contractor 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.

22. Confidentiality

22.1 Save for information already in the public domain or the Contractor's knowledge the Contractor and the Contractor'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 Contractor or the Contractor's staffing or in connection with the provision of the Services concerning the Council's Premises, the Council, its staff or its procedures

23. Freedom of Information

23.1 The Contractor acknowledges that the Council has legal responsibilities to make information available under the Freedom of Information Act 2000 ("the Act")

23.2 The Contractor shall give reasonable assistance to the Council to comply with the Act.

23.3 In particular, the Contractor 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.

23.4 Notwithstanding the provisions in Clause 21 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.

23.5 When exercising its right under sub Clause 4 above, the Council shall consult the Contractor (and may take account of any reasonable suggestions made by it).

23.6 The Contractor shall not raise any additional charge to the Council in relation to complying with this clause.

24. Data Protection

24.1 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 2018.

24.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 24 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

24.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the data controller and the Contractor is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).

24.4 Without prejudice to the generality of Clause 24.2, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data to the Contractor for the duration and purposes of this agreement.

24.5 Without prejudice to the generality of Clause 24.2, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this agreement:

24.5.1 process that Personal Data only on the written instructions of the Council unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to process Personal Data (Applicable Laws). Where the Contractor is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Contractor shall promptly notify the Council of this before performing the

- processing required by the Applicable Laws unless those Applicable Laws prohibit the Contractor from so notifying the Council;
- 24.5.2 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);
- 24.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 24.5.4 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:
- 24.5.4.1 the Council or the Contractor has provided appropriate safeguards in relation to the transfer;
- 24.5.4.2 the data subject has enforceable rights and effective legal remedies;
- 24.5.4.3 the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- 24.5.4.4 the Contractor complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- 24.5.5 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;
- 24.5.6 notify the Council without undue delay on becoming aware of a Personal Data Breach;
- 24.5.7 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
- 24.5.8 maintain complete and accurate records and information to demonstrate its compliance with this Clause 24.
- 24.6 The Council does not consent to the Contractor appointing any third party processor of Personal Data under this agreement

25. Contracts (Right of Third Parties) Act 1999

- 25.1 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.

26. Late Payment

- 26.1 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.

27. Force Majeure

- 27.1 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.

- 27.2 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.

28. Arbitration

- 28.1 All disputes between the parties arising out of or connected with this Contract or the performance of the Services by the Contractor 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.

- 28.2 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.

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

29. Law

- 29.1 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

30. Jurisdiction

- 30.1 This Contract shall be governed by and construed in accordance with the laws of England and the Contractor irrevocably submits to the jurisdiction of the English Courts

31. Copyright

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

In witness whereof the parties have executed this Deed in the presence of the attesting witnesses the day and year first before written

EXECUTED as a DEED by)
)
acting by:-)

Director

Director/Company Secretary

THE COMMON SEAL of)
THE BOROUGH COUNCIL OF)
KINGS LYNN AND WEST NORFOLK)
was hereunto affixed in the)
presence of: -)

Authorised Signatory