

## Appointment Agreement and Conditions of Contract

This Appointment Agreement is made the \_\_\_\_\_ day of \_\_\_\_\_ 2013  
between NORTH NORFOLK DISTRICT COUNCIL, Holt Road, Cromer, NR27 9EN  
(hereinafter called "the Council") of the one part and \_\_\_\_\_ whose address is  
(hereinafter called "the Consultant") of the other part

### WHEREAS:

- 1 The Council has invited Tenders for Consultants to supply .....  
Consultancy Services, "the Services"
- 2 The Consultant has submitted a Tender dated \_\_\_\_\_ 201? 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 The Invitation to Tender including the Specification
  - 3.2 Form of Tender (Consultants Document)
  - 3.3 Correspondence between the Council and the Consultant but not exclusively;  
Letters / e-mails dated:
  - 3.4 The letter of acceptance
  - 3.5 Consultants Insurance Documentation  
together called "the Contract Documents"
- 4 Definitions**
  - 4.1 'The Project Officer' shall mean the .....

### NOW THIS DEED WITNESSED 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 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 £1,000,000 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 £500,000 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.

### **4 Contract Period**

4.1 The contract period shall commence on 201? and shall be completed by 201?.

### **5 Liquidated damages**

5.1 If the provision of the Services is not completed by the date specified in clause 4.1 above the Contractor 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.

### **6 Termination**

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

6.1.1 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.

6.1.2 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.

6.1.3 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.

- 6.2 Upon determination of the employment of the Consultant under clause 6.1 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.
- 6.2.1 In the event of this agreement being determined whether by effluxion of time, Notice, breach or otherwise the Council shall immediately pay to the Contractor all arrears of payments and any other sums due under the terms of this agreement
- 6.2.2 Either party shall be entitled to exercise any one or more of the rights and remedies given to it under the terms of this agreement and the determination of this agreement shall not affect or prejudice such rights and remedies and each party shall be and remain liable to perform all outstanding liabilities under this agreement notwithstanding that the other may have exercised one or more of the rights and remedies against it
- 6.2.3 Any right or remedy to which either party is or may become entitled under this agreement or in consequence of the other's conduct may be enforced from this time to time separately or concurrently with any right or remedy given by this agreement or now or afterwards provided for and arising by operation of law so that such rights and remedies are not exclusive of the other or others but are cumulative

## **7. Specification**

- 7.1 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.
- 7.2 The Consultant shall be deemed to have satisfied himself before submitting his Tender as to the correctness and sufficiency of his price which shall (except insofar as it is otherwise provided in the Contract) cover all his obligations under the Contract.
- 7.3 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.
- 7.4 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.
- 7.5 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

## **8 Alterations to Contract Documents**

- 8.1 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.
- 8.2 Save for an omission, addition or variation agreed pursuant to Clause 8.1 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.

## **9 Whole agreement**

9.1 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.

## **10 Supersedes prior agreement**

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

## **11 Interpretation**

11.1 In the Contract, unless the contrary appears:

11.1.1 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.

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

## **12 Notices**

12.1 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.

12.2 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 at the Council Offices.

12.3 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.

## **13 Recovery of sums due**

13.1 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.

## **14 Waiver**

14.1 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.

## **15 No assignment or sub-contracting**

15.1 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.

- 15.2 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.
- 15.3 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.
- 15.4 It shall be a condition of any consent to sub-let any part of the contract that:
- 15.4.1 the employment of the sub-contractor shall cease immediately upon the determination (for whatever reason) of the Consultant's employment under this contract
- 15.4.2 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).
- 15.4.3 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 district boundary, the Consultant will use their best endeavours to ensure that payment to such a supplier/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).

## **16 Prevention of Corruption**

- 16.1 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:
- 16.1.1 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
- 16.1.2 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
- 16.1.3 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 Prevention of Corruption Acts 1889 to 1916 (or any amendments of them) or given any fee or reward or solicited or accepted any form of money or taken any reward collection or charge for providing the Services other than bona fide charges previously approved in writing by the Council, the receipt of which is an offence under sub-section 2 of section 117 of the Local Government Act 1972.

## **17 Duty of Care**

- 17.1 The Consultant shall exercise reasonable skill and care in the performance of the Services.

## **18 Observance of Statutory Requirements**

- 18.1 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.

## **19 Project Officer**

19.1 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.

## **20 Confidentiality**

20.1 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.

## **21 Freedom of Information**

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

21.2 The Consultant shall give reasonable assistance to the Council to comply with the Act.

21.3 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.

21.4 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.

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

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

## **22 Data Protection**

22.1 For the purposes of this clause:

22.1.1 "Personal Data", "Special Categories of Data", "Process / Processing", "Controller", "Processor", "Data Subject" and "Supervisory Authority" shall have the meanings described in Directive 95/46/EC of the European Parliament and Council of 24th October 1995 on the protection of individuals with regard the processing of personal data and on the free movement of such data (hereinafter the "Directive")

22.1.2 "The Act" shall be the Data Protection Act 1998 incorporating all amendments and revisions thereto.

22.2 The Council agrees and warrants:

22.2.1 That the processing including the transfer of personal data by the Council has been and until transfer will continue to be carried out in accordance with the Act

22.2.2 To respond in a reasonable time and to the extent reasonably possible to enquiries from the supervisory authority on the processing of personal data by

the Consultant and to any enquiries from the Data Subject concerning the processing of personal data by the Consultant

- 22.3 The Consultant agrees and warrants:
- 22.3.1 That he has no reason to believe that the legislation applicable to him prevents him from for filling his obligations under the contract and in the event of a change in that legislation which is likely to have a substantial adverse effect on the guarantees provided in this clause he will notify the change to the Council and where relevant to the Supervisory Authority of Great Britain in which case the Council is entitled to suspend the transfer of personal data and if necessary the Contract
- 22.3.2 To process personal data only in so far as is required to for fill the requirements of the Contract and only in accordance with the Data Protection Principals of Schedule 1 of the Act
- 22.3.3 To adequately dispose of all personal data at the end of the Contract or at the end of any part of the Contract, such disposal to take account of the Data Protection Principals of Schedule 1 of the Act
- 22.3.4 To indemnify the Council against all actions costs claims expenses proceedings and demands which may be made or brought against the Council for breach of statutory duty under the Act which arises by the unauthorised use disclosure or transfer of personal data by the Consultant his servants or agents
- 22.3.5 To deal promptly and properly with all reasonable inquiries from the Council or the Data Subject relating to the processing of Personal Data subject to the transfer and to cooperate with the competent Supervisory Authority in the course of all its enquiries and abide by the advise of the Supervisory Authority with regard to the processing of data transferred
- 22.3.6 At the request of the Council to submit its data processing facilities for audit which shall be carried out by the Council or an inspection body composed of independent members and in possession of the required professional skills and competences and where required in agreement with the Supervisory Authority
- 22.4 The Parties agree that the provision of this clause shall remain in force notwithstanding the termination or conclusion of the remainder of the Contract for so long as the Consultant holds personal information which has been transferred to it by the Council.

## **23 Contracts (Rights of Third Parties) Act 1999**

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

## **24 Late Payment**

- 24.1 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.

## **25 Force Majeure**

- 25.1 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.
- 25.2 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

**26 Arbitration**

- 26.1 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.
- 26.2 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.
- 26.3 Any award or decision of such Arbitrator shall be final and binding on the parties hereto.

**27 Law**

- 27.1 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

**28. Whistleblowing Policy**

- 28.1 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

**29. Copyright**

- 29.1 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.

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/Company Secretary

THE COMMON SEAL of    )



NORTH NORFOLK )  
DISTRICT COUNCIL )  
was hereunto affixed in the )  
presence of: - )

.....  
Authorised Signatory

.....  
Authorised Signatory