

**1. Definitions & Interpretation**

**1.1** In this Agreement, unless the context in which the words appear requires otherwise, the following words and expressions will have the following meanings:

- (a) **Additional Services** means tasks which the Consultant is instructed in writing by the Authorised Officer to perform in accordance with Condition 2.9 that are additional to the Services;
- (b) **Agreement** means these Conditions, the Order and any other document referred to in the Order;
- (c) **Apprenticeship** means course of training relevant to the Services being provided;
- (d) **Authorised Officer** means the person named in the Order or any person designated or nominated by London Councils in writing as its representative, in relation to instructions to, and receipt of information, documents, etc. from the Consultant under this Agreement;
- (e) **Data Loss Event** any event that results, or may result, in unauthorised access to Personal Data held by the Processor 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.
- (f) **Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data
- (g) **Data Protection Legislation:** (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy
- (h) **Data Subject 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.
- (i) **DPA 2018** Data Protection Act 2018
- (j) **Confidential Information** means all information obtained under this Agreement or in connection with the Services;
- (k) **Consultant** means the firm, company, or individual being the counterparty to London Councils named in the Order;
- (l) **Deprived Area** means any borough, district or other local government area (defined as such in the law of any member state of the European Union) defined as "most deprived" in the English Indices of Deprivation 2015, as published from time to time, by the Department of Communities and Local Government (DCLG), or in any similar or equivalent index or table as maybe published from time to time, by any central or local government or public body in any member state of the European Union;
- (m) **Deliverable** means any data, report, drawing, specification, design, invention, plan, program, document, contract, and/or other material produced, or acquired, and provided by the Consultant during the performance of the Services;

- (n) **Fee** means the sum indicated in the Order to be paid by London Councils in consideration of the Consultant carrying out and completing the Services to London Councils' satisfaction;
- (o) **GDPR** the General Data Protection Regulation (Regulation (EU) 2016/679)
- (p) **Joint Controllers** where two or more Controllers jointly determine the purposes and means of processing
- (q) **Law** means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, , regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or requirements with which the Processor is bound to comply
- (r) **LED** Law Enforcement Directive (Directive (EU) 2016/680)
- (s) **Limitation Period** unless stated otherwise in the Order, means the period of 6 years commencing from either the date of completion of the whole of the Services, or (if earlier) the date upon which the Consultant's engagement under this Agreement is terminated;
- (t) **London Councils** is a Joint Committee established pursuant to section 102 of the Local Government Act 1972 (as amended), whose principal offices are at 59% Southwark Street, London SE1 0AL;
- (u) **Materials** means all background and third party information and materials including, database rights, patents, registered and unregistered designs, logos, internet domain names, business or trade names and registrations, and all registered and unregistered trademarks, (and any applications for registration therefor if any) in any way used by the Consultant in preparation of the Deliverables;
- (v) **Order** means the order form letter or Deed issued by London Councils (into which these Conditions are incorporated by reference) instructing the Consultant to provide the Services;
- (w) **Payment Period** means (unless otherwise specified in the Order) 20 Working Days from receipt of a valid invoice and fee account (accompanied by detailed timesheets where requested or such other supporting evidence as may be reasonably requested by London Councils);
- (x) **Policies of London Councils** means respectively the Standing Orders, Financial Regulations and Equal Opportunities Policy of London Councils currently in force (copies of which can be obtained from the Authorised Officer), together with any further policies identified in this Agreement;
- (y) **Processor Personnel:** means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement
- (z) **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 the such measures adopted by it including those outlined in Schedule [A] (Security).

- (aa) **Services** means those services as set out on or referred to in the Order;
- (bb) **Stage** means any stage or point of progress in the execution of the Services if any as will be set out and so defined in the Order;
- (cc) **Sub-processor** any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement and
- (dd) **Working Day** means Monday to Friday inclusive, excluding Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England.

**1.2** Headings are for information only and do not form part of this Agreement.

**1.3** A reference to any Act of Parliament or to any Order, Regulation, Statutory Instrument, enforceable EU Legislation, Code of Practice or the like will include reference to any amendment or re-enactment of the same.

**1.4** Words importing the masculine gender include the feminine gender; words in the singular include the plural and vice versa and words importing individuals will be treated as importing corporations companies and/or partnerships and vice versa.

**1.5** The terms of this Agreement will be the sole terms applying to this Agreement and all other conditions of contract, or terms of trade, supplied by the Consultant are specifically excluded and do not amend, or in any way displace the terms and conditions of this Agreement.

**2. Services**

**2.1** London Councils engages the Consultant and the Consultant agrees to carry out the Services subject to and in accordance with the terms of this Agreement.

**2.2** The Consultant will provide suitably qualified personnel to carry out the Services using all reasonable skill, care and diligence having regard to current knowledge, information and good practice.

**2.3** The Consultant will in the execution of the Services take account of any Statute, Statutory Instrument, Byelaw, relevant British Standard or equivalent European Standard or other mandatory requirement or Code of Practice and the Policies of London Councils, which may be in force, or come into force, during the execution of the Services.

**2.4** The Consultant will collaborate and work in consultation with any other consultants or contractors appointed now, or at any time by London Councils, during the provision of the Services.

**2.5** The Services will be performed by the Consultant within the time limit stated in the Order (or if none stated, within a reasonable time)

**2.6** If the Services set out in the Order are set out in Stages, the Consultant will not proceed with any Stage without the written authority of the Authorised Officer.

2.7 The Consultant will, if so required, attend upon a committee of London Councils, or any statutory or public body, on any matter concerning the Services and will attend any meetings called by the Authorised Officer, make such reports concerning the Services as the Authorised Officer may reasonably require.

2.8 London Councils will be relying upon the Consultant's skill and expertise in the provision of the Services and also upon the accuracy of all statements made and advice given by the Consultant in connection with the provision of the Services and the accuracy of any documents, reports or other materials drawn up or created by the Consultant in relation to the same, subject always to the Consultant's obligations set out in Condition 2.2.

2.9 If instructed to do so, the Consultant will carry out Additional Services. Any such instruction will only be regarded as valid and in accordance with this Agreement if it is headed "Additional Services". The Consultant will be remunerated for the provision of Additional Services by a pre-agreed lump sum figure in writing, or in the absence of such an agreement on an hourly basis in accordance with the rates set out in the Order.

2.10 Where the Consultant is to be paid under Condition 2.9 for carrying out Additional Services at an hourly rate London Councils will only be obliged to consider applications for such payments where they are supported by duly completed timesheets in accordance with the format set out in Appendix 1.

2.11 The Consultant will only be entitled to receive additional payments where it has received a written instruction from the Authorised Officer strictly in accordance with Condition 2.9.

### 3. Payment

3.1 London Councils will pay to the Consultant and the Consultant will accept in full satisfaction for the performance of the Services the Fee, or such other amount as may become payable to the Consultant in accordance with, at the times and in the proportions set out in, this Agreement, together with any correctly charged V.A.T. that is applicable.

3.2 Where it is agreed that interim payments on account are to be made to the Consultant by London Councils, these payments will be made at intervals, or on the dates set out in the Order which will be the payment due date in this Agreement. Payment for the Services and any Additional Services will, unless otherwise agreed in writing, be made by London Councils within the Payment Period. The last day of the Payment Period is the final date for payment under this Agreement.

3.3 As a condition precedent to payment London Councils' Purchase Order number must be indicated on any invoice submitted by the Consultant in connection with this Agreement. London Councils will be entitled to reject any invoice submitted by the Consultant in the event that London Councils' relevant Purchase Order number is not stated on the invoice. Invoices submitted by the Consultant will be considered and verified by London Councils in a timely fashion and undue delay in doing so will be insufficient justification for failing to regard an invoice as valid and undisputed.

3.4 Without waiver or limitation of any rights or remedies London Councils will be entitled to withhold, deduct or set-off from any amounts due or owing by London Councils to the Consultant in connection with this

Agreement any losses, costs or damages arising from the Consultant's breach of this Agreement, or any other agreement, subject always to London Councils giving the Consultant written notice not later than 5 Working Days before the final date for payment of the amount due, which will specify any amount proposed to be withheld, deducted or set-off, the ground or grounds for such withholding and/or deduction.

3.5 The Consultant shall be responsible for payment of all taxes relating to the Fee. If the Consultant is a Limited Liability Company (Ltd.) or an entity with separate legal personality to the individual(s) that are responsible for providing the interface with London Councils (including provision of the Services), the Consultant (including any employees of the Consultant) will be considered as being "off payroll" for the purposes of taxation and will continue to be responsible for payment of all taxation for the duration of the Services provision.

### 4. Insurance & Indemnity

4.1 The Consultant will have and keep in force Professional Indemnity insurance and Public Liability insurance and if applicable Employer's Liability Insurance to cover any claim made against them by London Councils in relation to their Services including any loss arising out of the breach of Condition 2 and will upon request, from time to time, produce to the Authorised Officer suitable proof that such cover is in place.

4.2 The Consultant will indemnify London Councils against any claims for loss or damage to property or injury or death to any person arising directly out of their obligations and the performance of the Services.

### 5. Intellectual Property Rights

5.1 Where the Order states that Option A applies:

- all Deliverables will be the property of London Councils in all respects and the Consultant hereby assigns full copyright and future copyright and all other intellectual property rights in the Deliverables to London Councils.
- upon completion of the Services or earlier termination of the Consultant's engagement under Condition 18, all Deliverables will immediately be delivered to London Councils.
- notwithstanding any other provision of the Order, the Consultant:
- will on completion of the Services or earlier termination of the Consultant's engagement under Condition 18, assign and transfer all database rights, patents, registered and unregistered designs, logos, internet domain names, business or trade names and registrations, and all registered and unregistered trademarks, (and any applications for registration therefor if any) specifically prepared for London Councils under the Order or for the purposes of entering into the Order.

• hereby grants to (or will procure for the benefit of) London Councils, a non-exclusive licence to use the Materials for whatever purpose and in whatever medium London Councils deems appropriate and will immediately deliver copies of such Materials to London Councils.

• To the extent necessary for the on-going use of the delivered product, the Consultant grants to (or procures for the benefit of) London Councils an irrevocable non-fee paying non-exclusive licence to use their or appropriate

third-party logos, trademarks and other intellectual property together with all appropriate hosting agreements, websites and other software in accordance with agreed guidelines or conditions for the purposes of the Services and any on-going project as set out or referred to in the specification of the Services.

5.2. Where the Order states that Option B applies:

- The Consultant grants to London Councils an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of the Deliverables prepared by, or on behalf of, the Consultant for any purpose relating to the Services or the property to which they relate, including the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, extension, building information modelling and repair of such property.

• The licence granted pursuant to Condition 5.2:

- allows London Councils to use the Deliverables relating to any extension of the property, but not to reproduce the designs contained in the Deliverables in any such extension; and
- carries the right to grant sub-licences and is transferable to third parties without the consent of the Consultant, provided always that the Consultant will not be liable for use of the Deliverables for any purpose other than that for which they were prepared and/or provided. Insofar as the Consultant is the author (as referred to in the Copyright, Designs and Patents Act, 1988) of the Deliverables, the Consultant waives any moral rights which it might otherwise be deemed to possess under Chapter IV of such Act in respect of the same. The Consultant must procure for London Councils a corresponding waiver from the author (as referred to in such Act) of the remainder of the Deliverables in respect of the same.

5.3. Where the Order states that Option C applies:

- The Consultant warrants that all royalties and fees on patented articles, processes and registered designs have been paid and agrees to indemnify London Councils against all claims which may arise from any breach of such warranty.
- London Councils will promptly notify the Consultant of any claim being made or action brought against London Councils arising out of the matters referred to in this Condition 5.3, and the Consultant may (at its own expense) conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

5.4. The Consultant acknowledges that Copyright and all other intellectual property rights in the Order (including London Council's requirement/specification/design brief as referred to in the specification of the Services, all documents and materials together with any images, designs, logos and layouts and all patents, domain names, business or trade names and trademarks (whether registered, unregistered, applied for or pending or otherwise) and all other intellectual property rights

included therein), remains at all times vested in London Councils or other owners and London Councils hereby grants to the Consultant a limited licence to use such London Council's requirement/specification/design brief documents and materials etc. solely for the purposes of providing the Services to London Councils and for no other purpose whatsoever.

**5.5.** The Consultant acknowledges that London Councils may withhold any sums due under the Order if the Consultant fails to comply fully with the provisions of this Condition 5 until the Consultant so complies.

**5.6.** The Consultant warrants that it has power and necessary authority to enter into the Order and to grant the rights and licences in the Deliverables and Materials and that the use of the Deliverables and Materials will not breach any third-party intellectual property rights.

## 6. Confidentiality & Publicity

**6.1** The Consultant will only divulge Confidential Information to those employees who are directly involved in the Services or are engaged in support of them and will ensure that such employees are aware of, and will comply with, these obligations as to confidentiality.

**6.2** The Consultant will not advertise, or publicly announce that it undertakes work for London Councils, nor will it make any press release, or statement, without the prior written consent of the Authorised Officer.

**6.3** The Consultant agrees and warrants that it will not without the prior express written consent of London Councils:

- (a) use for its own benefit or otherwise exploit any Confidential Information nor divulge to any other party that the Consultant is intending to, or has tendered for, or been appointed to perform, the Services;
- (b) disclose any Confidential Information, in whole or in part, to any third person, firm, company or other such similar entity or otherwise use such information to the detriment of London Councils for example, but not limited to, the pursuit of a business opportunity;
- (c) use the Confidential Information for any purpose whatsoever other than that for which the Consultant is specifically given access; or
- (d) use the Confidential Information for any illegal or immoral purposes.

**6.4** The Consultant will take all reasonable precautions necessary to safeguard the personal nature of the Confidential Information and will advise and inform its personnel and agents to strictly observe such obligations.

**6.5** All notes, data, reference materials in any way incorporating, or reflecting, any of the Confidential Information will belong exclusively to London Councils and the Consultant agrees to turn over all copies of such materials in its control to London Councils upon request, or upon completion of the Services, or upon termination of the Consultant's engagement under this Agreement.

## 7. Data Protection

**7.1.** The Parties acknowledge that for the purposes of the Data Protection Legislation, London Councils is the Controller and the Contractor is the Processor. For the

avoidance of doubt the only processing that the Contractor is authorised to do is listed in the DP Schedule by the Controller and may not be determined by the Contractor.

**7.2.** The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

**7.3.** The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, 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.

**7.4.** The Processor 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 the DP schedule unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), 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 Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular the DP schedule);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this clause;
    - (B) are subject to appropriate confidentiality undertakings with the Processor 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 Controller 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 Controller has been obtained and the following conditions are fulfilled:

- (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;

- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Processor 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 Controller in meeting its obligations); and
- (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

**7.5.** Subject to Condition 7.6, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either
- (d) Party's obligations under the Data Protection Legislation;
- (e) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (f) 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
- (g) becomes aware of a Data Loss Event.

**7.6.** The Processor's obligation to notify under clause 7.5 shall include the provision of further information to the Controller in phases, as details become available.

**7.7.** Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Condition 7.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- (a) the Controller with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Controller following any Data Loss Event;
- (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

**7.8** The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Condition. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- (a) the Controller determines that the processing is not occasional;
- (b) the Controller 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; or

- (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

**7.9** The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

**7.10** Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

**7.11** Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

- (a) notify the Controller in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Condition [7.11] such that they apply to the Sub-processor; and
- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

**7.12** The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

**7.13** The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

**7.14** The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

**7.15** Notwithstanding any other provision herein contained, the Contractor shall indemnify the Controller in respect of any, fine, loss, claim, action damages or demand imposed on or suffered by the Controller as a result of any breach by the Contractor of this clause.

## **8 Delegation & Third Party Rights**

**8.1** The Consultant will not unless permitted, in writing, by the Authorised Officer and on terms acceptable to London Councils, sublet to, or sub-contract with any third party for all, or any part, of the Services.

**8.2** The Consultant must not appoint a sub-contractor or supplier in relation to the Services if there are compulsory grounds for excluding the sub-contractor or supplier under regulation 57 of the Public Contracts Regulations 2015. The Consultant must include in any sub-contract awarded by it in relation to the Services provisions requiring that:

- (a) payment due to the sub-contractor or supplier under the sub-contract is made no later than 30 days after receipt of a valid and undisputed invoice, unless the Order requires the Consultant to make earlier payment to the sub-contractor or supplier;
- (b) invoices for payment submitted by the sub-contractor or supplier are considered and verified by the Consultant in a timely fashion;

(c) undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed; and

(d) any contract awarded by the sub-contractor or supplier in relation to the Services includes provisions to the same effect as this Condition 8.2.

**8.3** The Consultant will not assign, or transfer, the benefit, or obligations of this Agreement, or any part of them.

**8.4** Nothing in this Agreement confers or purports to confer any rights to enforce any of its terms pursuant to the Contracts (Rights of Third Parties) Act 1999 on any person who is not a party to this Agreement.

## **9 Status of the Consultant**

**9.1** Nothing contained in this Agreement, or elsewhere, is to be read, or construed, as a contract of employment so as to place the parties in the position of employer or employee. Nothing contained in this Agreement is to be so construed as to constitute either party to be the agent of the other. This Agreement does not operate so as to create a partnership or joint venture of any kind between the parties.

## **10 Force Majeure**

**10.1** London Councils reserves the right to postpone or to cancel this Agreement or reduce the Services ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of London Councils including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## **11 Notices**

**11.1** Any demand notice, or other communication, required to be given hereunder will be sufficiently served if served personally on the addressee, or if sent by a pre-paid first class special delivery post, or by facsimile transmission to the registered office, or last known address of the party to be served with it and if so sent will subject to proof of the contrary, be deemed to have been received by the addressee on the second Working Day after the date of posting, or on successful transmission as the case may be.

## **12 Waiver & Severance**

**12.1** Failure by London Councils at any time to enforce the provisions of this Agreement, or to require performance by the Consultant of any of the provisions of this Agreement, will not be construed as a waiver of any such provision and will not affect the validity of this Agreement, or any part of this Agreement, or the right of London Councils to enforce any provision in accordance with its terms, at any time.

**12.2** If any provision in this Agreement becomes void, voidable or unenforceable by virtue of the coming into force of any statute or other mandatory legislation or in the event of any provision being declared by any court of competent jurisdiction to be such, then and in such event, the balance of this Agreement will remain in full force and effect.

## **13 Bribery**

**13.1** The Consultant must comply at all times with the provisions of the Bribery Act 2010, in particular Section 7 thereof in relation to the conduct of its employees, or persons associated with it.

**13.2** The Consultant warrants that, at all times, it has in place adequate procedures designed to prevent acts of bribery from being committed by its employees or persons associated with it, and must provide to London Councils at its request, within a reasonable time, proof of the existence and implementation of those procedures.

**13.3** London Councils is entitled by notice to the Consultant to terminate the Consultant's engagement under this or any other contract with the Consultant if, in relation to this or any other such contract, the Consultant or any person employed by it or acting on its behalf commits an offence in relation to the Bribery Act 2010.

## **14 Discrimination**

**14.1** The Consultant must not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or Schedule 8 of the Employment Equality (Age) Regulations 2006.

**14.2** Without prejudice to the generality of Condition 14.1, the Consultant is to comply with London Councils' Equal Opportunities Policy, a copy of which has been provided to the Consultant by London Councils.

**14.3** The Consultant will take all necessary steps to secure the observance of the provisions of Conditions 14.1 and 14.2 by all its employees, servants, agents or sub-contractors employed in the performance of the Services.

## **15 Freedom of Information**

**15.1** In the event that London Councils receives a request in connection with the Freedom of Information Act 2000 or the Environmental Information Regulations 2004:

- (a) the Consultant will use reasonable endeavours to assist London Councils, at no additional charge and within such timescales as London Councils may reasonably specify, in meeting any requests for information in relation to this Agreement or the Services which are made to London Councils; and
- (b) London Councils will, wherever reasonably practical, consult with the Consultant before disclosing information that relates to the Consultant.

**15.2** All information provided or assistance rendered by virtue of the Consultant's obligations under this Condition 15 is part of the Consultant's general obligations to London Councils and will be at no cost to London Councils.

## **16 Community Benefit**

**16.1** Where indicated in the Order, the Consultant will use its reasonable endeavours to procure at least 10% of the value of any supplies, services and works from sub-consultants and/or suppliers whose businesses have registered offices, (or seats of business as this latter term may be defined in the law of any member state of the European Union) in a Deprived Area(s) located within, or contiguous to the boundaries of, Greater London.

**16.2** For the purposes of this Agreement the figure of 10% referred to in Condition 16.1 has been calculated as a percentage of the Fee.

16.3 If requested by London Councils, from time to time, the Consultant will provide written evidence of its compliance with the target set out in Condition 16.1.

16.4 The Consultant acknowledges being aware generally of the European Union initiatives in matters of training skills and apprenticeship and more particularly with the requirements of the Apprenticeships, Skills, Children and Learning Act 2009 in matters relating to the creation of Apprenticeships Frameworks and the issuing of Apprenticeships Certificates and the wider social issues relating thereto. In the event that this Agreement requires any particular education and/or skills training to be made available and/or undertaken as part of the Services, the Consultant will ensure that it is made available or undertaken. Where there is no such particular requirement, the Consultant is encouraged by London Councils to ensure that appropriate training and opportunities for education, including (if appropriate) the provision of Apprenticeships, is available to its employees.

16.5 The Consultant is encouraged to suggest economically viable methods of procuring the Services or the subject thereof which, if instructed by London Councils, may result in an improvement in environmental performance in the carrying out of the Services or the subject thereof.

## 17 Audit

17.1 During the course of the Services and for the Limitation Period, London Councils may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of the fees paid to the Consultant (and proposed or actual variations to it in accordance with this Agreement) and/or the costs of all suppliers (including sub-contractors) for the Services;
- (b) to review the integrity, confidentiality and security of any data relating to London Councils;
- (c) to review the Consultant's compliance with the Data Protection Act 1998 or any other applicable legislation;
- (d) to review any records created during the course of the Services;
- (e) to review any books of account kept by the Consultant in connection with the provision of the Services;
- (f) to carry out the audit and certification of London Councils' accounts;
- (g) to carry out an examination pursuant to any legislation applicable to the economy, efficiency and effectiveness with which London Councils has used its resources; or
- (h) to verify the accuracy and completeness of any reports delivered or required by this Agreement.

17.2 Except where an audit is imposed on London Councils by a regulatory body, London Councils may not conduct an audit under this Condition 17 more than once in any calendar year.

17.3 London Councils will use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Consultant or delay the provision of the Services.

17.4 Subject to London Councils' obligations of confidentiality, the Consultant must on demand provide London Councils and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information requested by the above persons within the permitted scope of the audit;
- (b) reasonable access to any sites controlled by the Consultant and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
- (c) access to the Consultant's personnel.

17.5 London Councils will endeavour to (but is not obliged to) provide at least 10 Working Days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.

17.6 The parties agree that they will bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Condition 17, unless the audit identifies a material failure of the Consultant to perform its obligations under this Agreement in which case the Consultant must reimburse London Councils for all London Councils' reasonable costs incurred in the course of the audit.

17.7 If an audit identifies that:

- (a) the Consultant has failed to perform its obligations under this Agreement in any material manner, the parties will agree and implement a remedial plan. If the Consultant's failure relates to a failure to provide any information to London Councils about the Consultant's fees, any interim payment or proposed further payment, the Consultant's costs or any proposed or actual variations, then the remedial plan will include a requirement for the provision of all such information;
- (b) London Councils has overpaid, the Consultant must pay to London Councils the amount overpaid within 15 Working Days. London Councils may deduct the relevant amount from the Fee if the Consultant fails to make this payment; and
- (c) London Councils has underpaid, London Councils will pay to the Consultant the amount of the underpayment less the cost of audit incurred by London Councils if this was due to a default by the Consultant in relation to invoicing within 15 Working Days.

## 18 Termination

18.1 London Councils may terminate the Consultant's engagement under this Agreement by written notice, such notice being effective immediately, in the event of any of the following occurrences:

- (a) if the Consultant refuses, or neglects, to execute the Services, or any part of them, or commits any breach of any obligation imposed upon it by this Agreement, or refuses, or neglects within a reasonable time to comply with any instructions given to it by the Authorised Officer;
- (b) if the Consultant refuses or neglects to comply with the Policies of London Councils, or any provisions of such policies, or commits any breach of any obligation imposed upon the Consultant by such policies, or refuses, or neglects within a reasonable time to comply with any

instructions given to the Consultant by London Councils in regard to such Policies;

- (c) if the Consultant being an individual or a partnership has a petition for bankruptcy presented to the courts becomes bankrupt or makes a composition or arrangement with his creditors or has a proposal in respect of himself or his firm for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986 as amended, by the Enterprise Act 2002, or where an application for bankruptcy is made against any individual partner of the firm, or where the partnership has a provisional liquidator receiver, or manager of its business duly appointed, or where the partnership is dissolved save for the purposes of bona fide reconstruction on terms acceptable to London Councils, or where a substantial change in the partners occurs;
- (d) if the Consultant being a company has an application made under the Insolvency Act 1986 as amended by the Enterprise Act 2002 in respect of its company to the court for the appointment of an administrator, or having a winding up order made, or a resolution passed (except for the purposes of amalgamation or reconstruction on terms acceptable to London Councils) for voluntary winding up, or having a provisional liquidator, receiver, or manager of its business, or undertaking duly appointed or having an administrative receiver as defined in the Insolvency Act 1986 as amended, by the Enterprise Act 2002, appointed, or having possession taken by, or on behalf of, the holders of any debentures secured by a floating charge;
- (e) in the event of any substantial change in legal status, or of circumstances occurring which will materially affect the contractual relationship between the parties, or the rights of London Councils to sue, or otherwise recover monies due, or enforce any other right arising under this Agreement which for the purposes of this Agreement has not been agreed between the parties;
- (f) if at any time progress on any part of the Services appears to the Authorised Officer to be unnecessarily delayed by any cause within the reasonable control of the Consultant and such delay and the cause of it if capable of remedy is not remedied within 5 Working Days after an instruction in writing requiring the same is given to the Consultant by the Authorised Officer;
- (g) in the circumstances specified in Condition 13.3; or
- (h) in the circumstances specified in regulation 73(1) of the Public Contracts Regulations 2015.

18.2 If London Councils at any time in its absolute discretion wishes to abandon, defer, delay, postpone or substantially modify the provision of the Services, London Councils may give written notice to terminate the Consultant's engagement or suspend the whole or any specified part of this Agreement with immediate effect.

18.3 If London Councils terminates the Consultant's engagement under Condition 18.2, London Councils will pay to the Consultant:

- (a) at the conclusion of any agreed Stage of the Services such sum as will have been agreed upon the execution of this Agreement to represent the consideration due for the completion of any such Stage; or
- (b) where no Stages have been defined, or in the event of termination at a time when any Stage is part

performed by the Consultant, such proportion of the consideration for either the Services, or the part performed Stage of the Services, as the Authorised Officer, acting reasonably, determines represents a fair proportion of the consideration due to the Consultant, in accordance with the Order for the Services authorised by the Authorised Officer and performed by the Consultant.

18.4 Termination of the Consultant's engagement or completion of this Agreement will not prejudice any rights and remedies of London Councils and the Consultant that may have accrued before such termination, or completion, or prejudice the right of either party to recover any amount outstanding at such termination, or completion.

## 19 Construction projects

19.1 Where applicable, the Consultant will carry out and fulfil, in all respects, the duties of a 'designer' (and, if so indicated in the Order, as the 'principal designer') under the Construction (Design and Management) Regulations 2015.

19.2 In the event that this Agreement constitute a contract to which the provisions of Part II of The Housing Grants, Construction and Regeneration Act 1996 apply, the following provisions of this Condition 19 will apply, but not otherwise.

19.3 Not later than 5 Working Days after the payment due date, either:

- (a) London Councils will give a notice to the Consultant, which confirms the following:
- the sum that London Councils considers to be or to have been due at the payment due date in respect of the payment, and
  - the basis on which that sum is calculated; or
- (b) the Consultant will give a notice to London Councils confirming the following:
- the sum that the Consultant considers to be or to have been due at the payment due date in respect of the payment, and
  - the basis on which that sum is calculated.

It is immaterial that the sum referred to in this Condition 19.3 may be zero.

19.4 Subject to Condition 19.5, if notice is not issued by London Councils pursuant to Condition 19.3(a) the Consultant may issue a notice pursuant to Condition 19.3(b) at any time after the date on which the notice referred to in Condition 19.3(a) is required to be given and where the Consultant gives a notice complying with Condition 19.3(b), the final date for payment of the sum specified in the notice is for all purposes to be regarded as postponed by the same number of days as the number of days after the date that the notice was given.

19.5 If the Consultant's invoice issued pursuant to Condition 3.2 complies with the provisions of Condition 19.3(b) then the Consultant may not give another such notice pursuant to Condition 19.3.

19.6 To the extent not already paid, London Councils must pay the notified sum on or before the final date for payment unless either:

- (a) it gives to the Consultant a notice of London Councils' intention to pay less than the notified sum specifying:
- the sum that London Councils considers to be due on the date the notice is served, and
  - the basis on which that sum is calculated,

such notice must be given not later than 5 Working Days before the final date for payment and it is immaterial for the purposes of this Condition 19.6 that the sum referred to in such notice may be zero; or

- (b) the Consultant becomes insolvent not earlier than 5 Working Days before the final date for payment, in which event London Councils need not pay any sum due in respect of the payment.

19.7 If any dispute or difference arises under or in connection with this Agreement, which either party wishes to refer to adjudication, Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011 will apply except that:

- (a) the nominating body will be the Technology and Construction Solicitors Association.
- (b) in the first sentence of paragraph 1(3) the word *briefly* are deleted and substituted by the words *in detail*.
- (c) paragraph 22 is deleted and substituted with the following:

*The adjudicator must give a decision together with reasons therefor in writing and may award costs as part of the decision. Each party will be entitled to make written representations as to why it should not be allocated any portion of the costs flowing from the adjudicator's decision, and the adjudicator must take due consideration including giving reasons for his further determination in this regard. If no award as to costs is made by the adjudicator, the parties will bear the costs of the adjudication in equal shares.*

- (d) a new paragraph 22A(5) is inserted as follows:

*As part of the corrected decision, the adjudicator also has power to reassess his prior determination as to which party will be responsible for the costs flowing from his corrected decision.*

## 20 Governing Law & Disputes

20.1 Except where Condition 19.7 applies, if any dispute arises out of this Agreement which cannot be amicably settled between the parties then the parties will attempt to settle such dispute by mediation in accordance with the Model Mediation Procedure published by the Centre for Effective Dispute Resolution from time to time. Neither party will commence any court proceedings/litigation in relation to any dispute arising out of this Agreement until they have attempted to settle it by mediation and that mediation has terminated.

20.2 The Consultant will continue to perform its obligations (including, any Additional Services) even if any

dispute resolution procedure has been invoked under this Condition 20 by either party.

20.3 This Agreement will be governed by and construed in accordance with the Laws of England and the parties submit to the exclusive jurisdiction of the English Courts.

