

# **FLINTSHIRE COUNTY COUNCIL – CONSULTANCY SERVICES** **WEBSITE TERMS AND CONDITIONS**

- (1) **COUNCIL** (as defined in the purchase order); and
- (2) **CONSULTANT / CONTRACTOR / SELLER** (as defined in the purchase order)

Each known as a “**Party**” to and collectively as “**Parties**” to this Contract.

- i.) The Council wishes to receive the Consultancy Services set out by the Council and the Consultant has specific technical skills, expertise and resources to provide them; and
- ii.) The Consultant has put forward a proposal to deliver the Consultancy Services; and
- iii.) In reliance on the representations made by the Consultant, the Council seeks to appoint the Consultant to perform and deliver the Consultancy Services; and
- iv.) The Consultant agrees to appoint specific individuals from within its organisation to deliver the Consultancy Services and agrees that the specific individuals will be Key Personnel under this Contract;
- v.) The Parties with the intention of creating a legally binding Contract have agreed terms between them for the delivery of the Consultancy Services as set out under this Contract; and
- vi.) This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract and it supersedes all prior negotiations, representations and undertakings, whether written or oral between the Parties, save that the Parties agree not to exclude any liability in respect of fraudulent misrepresentation.

## **1. INTERPRETATION**

In this Contract the following expressions shall have the following meanings:

<b>“Approval”</b>	means the prior written approval of the Council.
<b>“Authorised Officer”</b>	means the Person who has been appointed by the Council to exercise its rights and powers under this Contract, and who can make decisions under the Contract. This will not limit in any way any other of the Council’s rights or obligations.
<b>“Certified Data Wiping”</b>	means certified data destruction through a service that can certify that data held on IT systems has been deleted such as a software based method of overwriting the data that aims to completely destroy all relevant electronic data residing on a hard disk drive or other digital media.
<b>“Change in Law”</b>	means the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract.
<b>“Commencement Date”</b>	means the services commencement date i.e. the date of the purchase order.
<b>“Confidential Information”</b>	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it may be conveyed or on whatever media it is stored) including information which relates to the business affairs properties assets trading practices services developments trade secrets Intellectual Property Rights know-how personnel customers and suppliers of either Party all personal data and sensitive personal data within the meaning of the Data Protection Act 2018.
<b>“Contract”</b>	means these Conditions and the purchase order.
<b>“Contract Period”</b>	means the period from the Commencement Date to the Expiry Date.
<b>“Contract Price”</b>	means the sum to be paid by the Council to the Consultant.
<b>“Consultant Manager”</b>	means the Person who has been appointed by the Consultant to exercise its rights and powers under this Contract who can make decisions under the Contract without the need for the matter to be escalated in the Consultant Organisation. This will not limit in any way any other of the Consultant’s rights or obligations.
<b>“Consultancy Services”</b>	means the services to be provided to the Council by the Consultant in accordance with this Contract, as set out by the Council and in line with any proposal supplied by the Consultant.

<b>“Data Controller”</b>	has the meaning set out in the Data Protection Act.
<b>“Data Loss Event”</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract.
<b>“Data Processor”</b>	has the meaning set out in the Data Protection Act.
<b>“Data Protection Act” or “DPA”</b>	means the Data Protection Act 1998 and the Data Protection Act 2018.
<b>“Data Protection Impact Assessment”</b>	an assessment by the Council of the impact of the envisaged processing on the protection of Personal Data.
<b>“Data Protection Legislation”</b>	means the DPA, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the General Data Protection Regulation and the Law Enforcement Directive in so far as it relates to the processing of data and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
<b>“Data Subject”</b>	has the meaning set out in the Data Protection Act.
<b>“Data Subject Access Request”</b>	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data.
<b>“DBS Checks”</b>	means checks which the Consultant shall carry out in line with regulations from the Disclosure and Barring Service.
<b>“Dispute”</b>	any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services or any matter where this Contract directs the parties to resolve an issue by reference to Clause 12 Dispute Resolution Procedure.
<b>“Expiry Date”</b>	means the date specified by the Council when the Contract is due to expire unless the Contract Period is extended or the Contract terminated in accordance with the terms and conditions of the Contract.

<b>“Force Majeure Event”</b>	<p>means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including</p> <ul style="list-style-type: none"> <li>• an act of war;</li> <li>• an act of God;</li> <li>• a decree of Government;</li> <li>• riots;</li> <li>• civil commotion; or</li> <li>• any event or circumstance which is both beyond the control of whichever Party is affected and which could not have been foreseen with reasonable foresight.</li> </ul>
<b>“Good Industry Practice”</b>	<p>means standards, practices, methods and procedures conforming to the law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.</p>
<b>“Information”</b>	<p>shall have the meaning in section 84 of the FOIA.</p>
<b>“Intellectual Property Rights”</b>	<p>means patents (including any rights in or to (or any rights in and to), inventions); trademarks, service marks, logos, trade names and business names (including rights in goodwill attached) thereto); design rights; rights in or to (or rights in and to) internet domain names and website addresses; semi-conductor topography rights; copyright (including future copyright); database rights; rights in and to Confidential Information (including trade secrets); and all other intellectual property rights, in each case subsisting at any time in any part of the world (whether registered or unregistered) and any: (a) pending applications or rights to apply for registrations of any of these rights that are capable of registration in any country or jurisdiction; and (b) similar or analogous rights to any of these rights in any jurisdiction;</p>
<b>“Key Personnel”</b>	<p>means those persons identified by the Consultant to deliver the Consultancy Services.</p>
<b>“Law”</b>	<p>means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements with which the Consultant is bound to comply.</p>

<p><b>“Personal Data”</b></p>	<p>means any data that could potentially identify a specific individual, or can be used to distinguish one person from another and can be used for de-anonymising anonymous data and as defined in the Data Protection Act and the Data Protection Legislation.</p>
<p><b>“Prohibited Act”</b></p>	<p>the following constitute Prohibited Acts:</p> <p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:</p> <ul style="list-style-type: none"> <li>• induce that person to perform improperly a relevant function or activity; or</li> <li>• reward that person for improper performance of a relevant function or activity;</li> </ul> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Consultancy Contract;</p> <p>(c) committing any offence:</p> <ul style="list-style-type: none"> <li>• under the Bribery Act 2010;</li> <li>• under the Modern Slavery Act 2015;</li> <li>• under legislation creating offences</li> <li>• concerning fraudulent acts;</li> </ul> <p>at common law concerning fraudulent acts relating to this Consultancy Contract or any other contract with the Council; or</p> <p>(d) defrauding, attempting to defraud or conspiring to defraud the Council or</p> <p>(e) failure to comply with Section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992; or</p> <p>(f) failure to pay the national minimum wage pursuant to The National Minimum Wage Act 1998 and regulations made thereunder.</p>
<p><b>“Protective Measures”</b></p>	<p>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;</p>

<b>“Regulatory Bodies”</b>	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Council
<b>“Run-Off Professional Indemnity Insurance”</b>	means a professional indemnity insurance policy which comes into effect when the insured stops trading, and any claims made under it will relate to work carried out before the policy was incepted;
<b>“Service Specification”</b>	means the description of the Consultancy Services required by the Council;
<b>“Staff”</b>	means all persons (whether on a voluntary basis or not), including Key Personnel, employed or engaged by the Contractor to perform its obligations under the Contract together with the Contractor’s agents, suppliers and Sub-Contractors and employees or agents of Sub-Contractors used in the performance of its obligations under the Contract.
<b>“Sub-Contractor”</b>	means a contractor that enters into a Sub-Contract with the Consultant to carry out some or all of the Consultancy Services;
<b>“Working Day”</b>	means between Monday to Friday inclusive, but does not include any days which are bank holidays or public holidays;

## **1. CONSULTANCY SERVICES**

- 1.1 The Council engages the Consultant to deliver the Consultancy Services to the Council and the Consultant agrees to appoint the Key Personnel to provide the Consultancy Services on the terms and conditions set out below.
- 1.2 The Consultant shall ensure that the Key Personnel appointed to provide the Consultancy Services do so in accordance with Good Industry Practice using experience and expertise.
- 1.3 The Consultancy Services shall commence on the Commencement Date and shall be completed by the Expiry Date, (unless terminated earlier in accordance with the Contract or otherwise in accordance with law or equity).
- 1.4 In providing the Consultancy Services the Consultant shall comply with any dates or deadlines set by the Authorised Officer.
- 1.5 The Parties agree that time is of the essence in performing the Consultancy Services.
- 1.6 The Consultant shall only be permitted to assign this Contract or any part of it or sub-contract the provision of the Consultancy Services or any part of it with the prior written consent of the Authorised Officer, and if consent is given to sub-

contract the Consultant will ensure that all obligations under this Contract are set out in a sub-contract with any sub-contractor.

- 1.7 The Consultant acknowledges that the Council has placed reliance on the Consultant's reputation, expertise and experience and the Consultant warrants that the Consultancy Services shall be provided:
- i) in a proper, skilful and workmanlike manner;
  - ii) by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;
  - iii) in accordance with the Contract and any descriptions provided by the Consultant;
  - iv) to the reasonable satisfaction of the Authorised Officer; and
  - v) in a manner so that the Consultant takes every reasonable precaution to safeguard the Council's property entrusted to the care of the Consultant.
- 1.8 The Consultant warrants to the Council that to the extent that any goods, equipment or consumables are provided as part of the Consultancy Services the goods shall:
- i) be free from defects in design, material and workmanship; and
  - ii) be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
- 1.9.1 Without prejudice to the Council's rights to terminate under **Clause 3** (Termination), if any of the Consultancy Services supplied are not in accordance with the Contract, the Council shall be entitled to:
- i) require the Consultant to co-operate with a replacement consultant if the Council shall appoint a replacement consultant as soon as reasonably practicable and in any event within fourteen [14] days of a request to do so; or
  - ii) require repayment of the proportion of the Contract Price which has been paid in respect of the Consultancy Services together with payment of any additional expenditure over and above the Contract Price reasonably incurred by the Council in its absolute discretion in obtaining the replacement consultant or the Council shall in its absolute discretion be entitled to withhold payment of the Contract Price or a proportion of it.
- 1.10 The Consultant shall hold meetings with the Authorised Officer as often as the Authorised Officer reasonably requires during the Contract Period as may be necessary to secure the satisfactory and timely completion of the Consultancy Services and shall at all times act in good faith, and shall report to the Authorised



Officer in writing on the progress in completing the Consultancy Services not less often than once each month.

- 1.11 The Consultant shall make the Council aware of any difficulties that may arise in the delivery of the Consultancy Services.
- 1.12 The Consultant shall not discriminate against any person in respect of the delivery of the Consultancy Services.
- 1.13 The Consultant shall appoint a person to exercise its rights and powers under this Contract. The Consultant Manager shall be a senior person within the Consultant organisation and shall be able to make decisions under the Contract without the need for the matter to be escalated within the business.
- 1.14 The Authorised Officer and the Consultant Manager shall hold regular meetings, being at least monthly for the first three [3] months and quarterly thereafter (unless agreed otherwise) with the purpose of reviewing delivery of the Consultancy Services by the Consultant and the working of the Contract. Such meetings shall identify ways to improve delivery of the Consultancy Service and identify issues under the Contract and any remedial action that is required as a result. Neither Party may charge for any costs incurred in attending these meetings.
- 1.15 Where identified to the Consultant as being relevant to the Consultancy Services, the Consultant shall be obliged to comply with, and shall ensure that Staff shall comply with, such relevant policies of the Council in addition to any policies available from time to time on the Council's website which may be relevant to :
  - a) equality, social value and diversity policies;
  - b) health and safety policies;
  - c) safeguarding policies;
  - d) sustainability policies;
  - e) information security rules;
  - f) whistleblowing and/or confidential reporting policies;
  - g) all site rules relevant to the fulfilment of the Contractor's obligations in the performance of the Services;
  - h) Modern Slavery;
  - i) rules preventing bribery by person's associated with the Council and the Council's procedures to prevent bribery by persons associated with Contractors delivering services to the Council;
  - j) Ethical Code of Employment.

- 1.16 The Consultant:



- a) shall not, and shall procure that the Staff shall not, in connection with this Consultancy Contract, commit a Prohibited Act; and
- b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Consultancy Contract,

and if any breach of this Clause 1.16 is suspected or known, the Consultant shall notify the Council immediately.

- 1.17 The Consultant shall have a policy or policies (which shall be disclosed to the Council on request) to prevent any Staff from committing a Prohibited Act and shall enforce it where appropriate.
- 1.18 The Consultant warrants that it has not paid a commission nor agreed to pay any commission to any employee or representative of the Council by the Consultant or on the Consultant's behalf.
- 1.19 If the Consultant notifies the Council that it suspects or knows that there may be a breach of Clause 1.15, the Consultant shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documents. This obligation shall continue for six (6) years following the expiry or termination of this Contract.
- 1.20 The Consultant shall if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant Regulatory Body, government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.

## **2. CONTRACT PRICE**

- 2.1 In consideration for the performance of the Consultancy Services the Council shall pay the Consultant the Contract Price set out in the purchase order and at such intervals as may be specified upon delivery of an invoice from the Consultant.
- 2.2 Unless expressly provided for by the Council, the Contract Price shall be inclusive of all expenses incurred by the Consultant and the Consultant shall not be

entitled to reclaim any expenses from the Council.

### **3. TERMINATION**

3.1 Subject to the Force Majeure provisions in this Contract, the Council may terminate this Contract with immediate effect by notice in writing to the Consultant on or at any time if:

- a) the Consultant becomes bankrupt, insolvent, makes any composition with its creditors; or
- b) the Consultant is convicted of a criminal offence which is relevant to the Contract; or
- c) the Consultant ceases or threatens to cease to carry on its business; or
- d) there is a risk or a genuine belief that reputational damage to the Council will occur as a result of the Contract continuing; or
- e) the Consultant is in breach of any of its obligations under this Contract that is capable of remedy and which has not been remedied to the satisfaction of the Council within fourteen [14] days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied; or
- f) there is a material or substantial breach by the Consultant of any of its obligations under this Contract which is incapable of remedy; or
- g) the Consultant commits persistent minor breaches of this Contract (whether remedied or not); or
- h) the Consultant engages in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010; or
- i) the Consultant fails to comply with the Council's anti bribery and anti corruption policies as notified to the Consultant from time to time; or
- j) the Consultant is held to be in breach of the Data Protection Act, in respect of delivery of the Consultancy Service; or
- k) the Consultant fails to maintain registration with a Regulated Body or the Consultant is removed from membership of the Regulatory Body either with or without an appeal against any such act of removal.

3.2 The Council has relied on the proposal provided by the Consultant and any material misrepresentation contained therein shall entitle the Council to rescind or terminate this Contract at its option by written notice with immediate effect.

3.3 NOT USED

3.4 NOT USED

3.5 The Council may terminate this Contract if any variation is held to be a substantial variation within the meaning of Regulation 72(8) of the Public Contracts Regulations 2015 or the Contract is deemed to contravene any other provision of Regulation 72 of the Public Contracts Regulations 2015.

3.6 The Council may terminate this Contract at any time without liability to the Consultant by giving not less than one [1] months' written notice to the Consultant. In such circumstances, the Council will pay to the Consultant all monies then properly due to the Consultant for the Consultancy Services performed up to the date termination takes effect under the terms of this Contract.

3.7 If the Council elects to terminate this Contract on any grounds set out in this **Clause 3** it may do so wholly or in part and may give a notice period instead of immediately terminating the Contract.

**4. CONSEQUENCES OF TERMINATION AND EXPIRY**

4.1 Where this Contract is terminated through a Consultant default under sub-clauses 3.1 to 3.5 no further payments due to the Consultant will be paid by the Council until the Council has established the final costs in making any alternative arrangements as provided for in this **Clause 4**.

4.2 If this Contract is terminated in whole or in part, the Council:

- a) shall be liable to pay to the Consultant only such elements of the Contract Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or
- b) shall be entitled to recover from the Consultant (or his representative as the case may be) such elements of the Contract Price, if any, that have been paid in advance for Consultancy Services that have not been delivered at the date of termination; and/or
- c) may deduct from any sum or sums which would have been due from the Council to the Consultant under this Contract or any other Contract or to recover from the Consultant be) as a debt any sum in respect of any properly incurred, legally enforceable and reasonably mitigated loss or damage to the Council resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Consultancy Services or any parts of them; and/or
- d) in the event that any sum of money owed by the Consultant to the Council exceeds any sum of money owed by the Council to the Consultant under this Contract then the Council shall, at its sole discretion, be entitled to

deduct the sums from any future Contract the Consultant may enter into with the Council or recover the debt through the civil courts.

- 4.3 Upon the termination of the Contract for any reason, save as otherwise provided for in this Contract and to any rights or obligations which have accrued prior to termination, neither Party shall have any further obligation to the other under the Contract.
- 4.4 If the Council terminates this Contract (or terminates the provision of any part of this Contract) the Council shall be entitled to source a replacement consultant to provide the Consultancy Services or any part thereof.
- 4.5 Following the decision of the Council to terminate the Contract the Consultant shall continue to deliver the Consultancy Services in accordance with this Contract and will ensure that there is no degradation in the standard of the Consultancy Services until the termination date.
- 4.6 Upon termination or expiry of this Contract, the Consultant (or his representative where applicable) shall:
- a) within thirty [30] days of the date of termination or expiry, repay to the Council any amount which the Consultant may have been paid in advance in respect of Consultancy Services that have not been provided;
  - b) within five [5] days of the date of termination or expiry of this Contract, transfer to the Council (or any replacement consultant, as the case may be) any open case files;
  - c) within thirty [30] days of the date of termination or expiry of this Contract, return to the Council any data (including Personal Data) and Confidential Information belonging to the Council in the Consultant's possession, power or control and thereafter the Consultant shall through Certified Data Wiping irretrievably delete any such information stored on any format; and
  - d) (if relevant) within thirty [30] days of the date of termination or expiry of this Contract arrange the transfer to the Council (or any replacement consultant, as the case may be) the remainder of any licence required for the continued delivery of the Consultancy Services.
- 4.7 The Consultant shall use all reasonable endeavours to facilitate the smooth transfer of responsibility for the Consultancy Services to the Council (or any replacement consultant, as the case may be) and the Consultant shall not act at any time during the Contract Period or thereafter in a way calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult any such transfer.
- 4.8 The Consultant shall not charge the Council (or the replacement consultant, as the case may be) for any expenditure incurred howsoever in carrying out the arrangements as set out in Clause 4.6 or Clause 4.7.

## **5. CONFIDENTIAL INFORMATION**

- 5.1 The Consultant agrees at all times to treat all Confidential Information as confidential to the Council. The Consultant shall not at any time for any reason disclose or permit to be disclosed to any person any Confidential Information and the Consultant shall not otherwise make use of or permit any use to be made of any Confidential Information by any person.
- 5.2 The Consultant shall enter into a non-disclosure agreement if so required by the Council.

## **6. DATA PROTECTION**

- 6.1 The Parties shall at all times comply with the Data Protection Legislation.
- 6.2 Failure by the Consultant to comply with its obligations under this Clause 6 may be regarded as a material breach of this Contract.

## **7. FREEDOM OF INFORMATION**

- 7.1 The Consultant acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (“**FOIA**”) and the Environmental Information Regulations 2004 (“**EIR**”) and shall assist and co-operate with the Council (at the Consultant's expense) to enable the Council to comply with these information disclosure requirements.
- 7.2 The Consultant shall:
- i) transfer any request for Information to the Council as soon as practicable after receipt and in any event within five [5] working days;
  - ii) provide the Council with a copy of all Information in the form required by the Council within five [5] working days (or such other period as the Council may specify) of a request for that Information; and
  - iii) provide such assistance as the Council reasonably request to enable the Council to respond to a request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 7.3 The Council will be responsible for determining at its absolute discretion whether any Information:
- i) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; or
  - i) is to be disclosed in response to a request for the Information.
- 7.4 The Consultant will not respond directly to a request for the Information unless expressly authorised to do so by the Council.
- 7.5 The Consultant acknowledges that the Council may be obliged under the FOIA or EIR to disclose the Information:

- i) without consulting the Consultant, or
- ii) following consultation with the Consultant and having taken the Consultant's views into account.

7.6 The Consultant acknowledges that any lists or schedules provided by the Consultant outlining information the Consultant considers to be confidential are of indicative value only and that the Council may nevertheless be obliged to disclose confidential information in accordance with this **Clause 7**.

## **8. INTELLECTUAL PROPERTY**

8.1 The Consultant warrants that in providing the Consultancy Services it shall not infringe the copyright, design right, patent, or any other Intellectual Property Rights of any third party and indemnifies the Council against any legally enforceable claim made against it arising from any infringement of any Intellectual Property Rights belonging to any third party.

8.2 The copyright and any other Intellectual Property Rights in any materials produced in the course of or in consequence of providing the Consultancy Services shall belong to the Council and the Council grants to the Consultant a perpetual non-exclusive licence to copy and use such materials for its own reference and records only.

8.3 The Consultant shall indemnify the Council against any legally enforceable claim brought against the Council alleging an infringement of the Intellectual Property Rights belonging to a third Party, by reason of use, operation or application of the Consultancy Services, and the Consultant shall pay all costs and damages awarded or agreed to in settlement of any such claim against the Council provided that the Council shall:

- furnish the Consultant with prompt written notice of any such claim; and
- consult with the Consultant to receive assistance from the Consultant in defending any such claim.

8.4 If, in the Consultant's reasonable opinion, (having consulted with the Authorised Officer) the use of the Consultancy Services becomes or may become the subject of an allegation of an infringement of the Intellectual Property Rights of a third party, then the Consultant shall either:

- i) obtain the right to continue using the alleged infringing Intellectual Property Rights in question in the Consultancy Services; or
- ii) replace or modify the Consultancy Services so they become non-infringing provided such replacement or modification does not result in the Consultancy Services failing to comply with the Service Specification, unless agreed otherwise.

8.5 If the remedies set out in sub-clause 8.4 are not, (in the Consultant's reasonable opinion) available, then the Council may, without prejudice to any of the Council's

other rights or remedies under the Contract, immediately terminate the Contract in whole or part.

## **9. STATUS AND TAX LIABILITIES**

- 9.1 The Parties declare that the Consultant is not employed by the Council and shall not be entitled to any pension, bonus or other benefit (other than the Contract Price payable under this Contract) from the Council.
- 9.2 The Consultant shall be responsible for all Income Tax liabilities and National Insurance liabilities or similar contributions in respect of payments by the Council to the Consultant made under this Contract.
- 9.3 The Consultant shall indemnify the Council in respect of any legally enforceable claims that may be made by the relevant authorities against the Council in respect of Income Tax or National Insurance or similar contributions relating to the Consultancy Services.

## **10. LIMITATION OF LIABILITY**

- 10.1 Subject to Clause 10.2 the Consultant shall be liable for and shall indemnify the Council against any expense, liability, loss, claim or proceedings whatsoever arising in respect of any negligent act, error, breach of contract or omission howsoever arising out of providing the Consultancy Service and the Consultant's total liability to the Council arising under or in connection with this Contract shall be unlimited.
- 10.2 Neither Party will be liable to the other for any indirect or consequential loss arising whether in contract, or in negligence, or in other tort in connection with the performance or non-performance of its obligations under this Agreement, except to the extent that by law any such liability may not be excluded or limited.
- 10.3 This **Clause** 10 shall not exclude or limit the liability of either Party for fraud or misrepresentation.

## **11. INDEMNITY AND INSURANCE**

- 11.1 The Consultant shall take out and maintain for the Contract Period the following insurances:
- i) employer's liability insurance at such amount per event as required by the Council and the Consultant shall retain the employer's liability insurance until the Expiry Date;
  - ii) public liability insurance in respect of liability for death or bodily injury to any person, or loss of or damage to property or any other loss or damage arising out of the performance or attempted or purported performance or non-performance of the Contract at such amount per event as required by the Council; and the Consultant shall retain the public liability insurance until the Expiry Date;



- i) professional indemnity insurance in a sum normal and customary for a consultant in the business in which the Consultant is but in any event at such amount as required by the Council.
- 11.2 The Consultant shall retain professional indemnity insurance for six [6] years after expiry (if this Contract is signed) or twelve [12] years after expiry (if this Contract is sealed as a deed) and if the Consultant shall cease operations during this extended period of liability the Consultant shall ensure that protection against any claim that may be brought by the Council is provided through Run-Off Professional Indemnity Insurance and shall be obliged if requested to do so by the Council to prove annually to the Council that the insurance provision is still in place.
- 11.3 The Consultant shall produce evidence of the insurances referred to in **Clause 11.1** before delivery of the Consultancy Services commences and at any other time on the reasonable request of the Authorised Officer.
- 11.4 If the Consultant is found to be in breach of this **Clause 11**, the Council may decide to pay any premiums necessary to keep the required insurances in force and may recover such sums from the Consultant by way of deductions from amounts payable by the Council to the Consultant under the Contract or by recovering the same as a debt due to the Council from the Consultant.

## **12. DISPUTE RESOLUTION**

- 12.1 If any Dispute arises out of or in connection with the Contract, the Parties shall comply with the dispute resolution procedure set out in this **Clause 12**.
- 12.2 Nothing in this **Clause 12** shall prevent a Party's right to issue proceedings which would otherwise be prejudiced by a delay.
- 12.3 The Council shall provide administrative support to the implementation of the procedures, including the calling of meetings, recording and disseminating decisions as appropriate, etc.
- 12.4 Initially all problems or disputes arising between the Parties shall be discussed as quickly as possible between the Consultant and the Authorised Officer with a view to a rapid resolution without the need for further formal action under this procedure.
- 12.5 If this informal process fails to produce a resolution then either Party may refer to the procedure starting at Stage 1.

### **STAGE 1**

- 12.6 Either Party shall outline the dispute in writing and send it to the other Party.
- 12.7 The Authorised Officer will within seven [7] days of service of such a written dispute notification arrange a meeting of all Parties to take place at a mutually convenient venue and date (which in any event will not be more than twenty-one [21] days from service of such a written dispute notification).

- 12.8 The meeting will be chaired by the Authorised Officer (or such other person as is agreed between the Parties) and attended by any other relevant persons as either Party deem appropriate.
- 12.9 The purpose of the meeting will be to discuss and record the dispute and to try to reach an agreed resolution/action plan.
- 12.10 If an action plan is agreed to resolve the dispute the Authorised Officer will be responsible for sending minutes of the meeting to the Consultant within seven [7] days of the meeting and monitoring the implementation of the action plan.
- 12.11 If the meeting under this Stage 1 fails to produce a resolution to the dispute, or the action plan fails to remedy the dispute within a reasonable time, either Party may proceed to Stage 2.

### **STAGE 2 - MEDIATION**

- 12.12 The costs of the mediation shall be borne equally by the Parties.
- 12.13 The Parties agree that the decision of such mediation shall be binding.
- 12.14 The procedure for mediation and consequential provisions relating to mediation are as follows:
- i) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or if they are unable to agree upon a Mediator then they shall apply to the Centre for Effective Dispute Resolution (“**CEDR**”) to appoint a Mediator;
  - ii) the Parties shall, within ten [10] Working Days of the appointment of the Mediator, agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;
  - iii) unless otherwise agreed, all negotiations connected with the Dispute and any settlement or agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
  - iv) if the Parties reach agreement on the resolution of the Dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
  - v) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
  - vi) if the Parties fail to reach agreement in Stage 2 within forty [40] Working Days of the Mediator being appointed or such other period as may be

agreed by the Parties, the Dispute may be referred to the courts of England and Wales.

### **13. EQUAL OPPORTUNITIES**

In the performance of the Consultancy Services, the Consultant shall ensure that it complies with the Human Rights Act 1998 as if the Consultant were a public body, and shall comply with all laws relating to equal opportunities, including but not limited to the Equality Act 2010.

### **14. SOCIAL VALUE**

The Consultant shall be required to deliver social value elements pursuant to the Wellbeing of Wales Act 2015 that were set out in their proposal or shall agree with the Authorised Officer reasonable endeavours to ensure that, in providing the Consultancy Services, it improves the economic, social and environmental well-being of the County of Flintshire.

### **15. RECORD KEEPING AND MONITORING**

- 15.1 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Consultant shall keep and maintain for six [6] years (or such longer time period required in accordance with any specific legislation) after the Contract has been completed, full and accurate records in respect of the Contract and the Consultancy Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Consultant shall on request allow the Council or the Council's representatives such access to (and copies of) those records as may be required by the Council in connection with the Contract.
- 15.2 The Consultant will at its own cost, provide any information that may be required by the Council to comply with the Council's procedures for monitoring of the Contract.

### **16. FORCE MAJEURE EVENTS**

- 16.1 The Consultant will have in place contingency plans to ensure that obligations under this Contract can be performed if at all possible even during a Force Majeure Event.
- 16.2 The Consultant will provide copies of its contingency plans to the Authorised Officer upon request.
- 16.3 Neither Party shall be liable for failure to perform its obligations under the Contract if such failure is the results of a Force Majeure Event and they have notified the other Party in writing within two [2] days of the Force Majeure Event occurring.
- 16.4 Industrial action by, illness, or shortage of the Consultant's Employees, agents or sub-contractors, failure or delay by any of the Consultants' to supply goods, components, services or materials and breach of any warranties given by the Consultant shall not be regarded as a Force Majeure event.

- 16.5 If a Force Majeure Event prevents either Party from performing its obligations under the Contract in any material respect for a continual period of sixty [60] days, then without prejudice to any accrued rights or remedies under the Contract, either Party may terminate the Contract by notice in writing to the other Party having immediate effect.
- 16.7 If the Contract is terminated in accordance with this **Clause** 16 neither Party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.
- 16.8 If the Council or the delivery location is affected by a Force Majeure Event, the Council shall be entitled to totally or partially suspend the date or dates for delivery of the Consultancy Services until the Force Majeure Event ceases and any such suspension shall not give rise to any claim by the Consultant against the Council nor entitle the Consultant to terminate the Contract.

## **17. CHANGE IN LAW**

- 17.1 On the occurrence of a Change in Law which has a direct effect upon the Contract Price the Parties shall meet within fourteen [14] days of the Consultant notifying the Council of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Contract Price as a result.
- 17.2 If the Parties, within fourteen [14] days of the meeting referred to in Clause 17.1 have not agreed the occurrence or the impact of the Change in Law, the Consultant may refer the matter to dispute resolution in accordance with **Clause** 12.
- 17.3 Any agreed additional sums payable as a result of the operation of Clause 17.1 are to be included in the Contract Price. For the avoidance of doubt nothing in this Contract is intended to allow the Consultant double recovery of any increase in costs.

## **18. KEY PERSONNEL**

- 18.1 Key Personnel shall be provided for the performance of the Contract and the Consultant shall appoint Key Personnel who shall be responsible for the delivery the Consultancy Services.
- 18.2 Key Personnel shall not be released by the Consultant from delivery of the Consultancy Services without the agreement of the Authorised Officer (except by reason of long-term sickness, maternity leave, paternity leave, termination of employment, or any other extenuating circumstances).
- 18.3 Any replacements to Key Personnel shall be subject to the agreement of the Authorised Officer (acting reasonably) and such replacements shall be named by the Consultant. Such replacements shall be of equal status or of equivalent experience and shall have equivalent skills to the Key Personnel who are being replaced.

## **19. SUB CONTRACTS**

- 19.1 The Consultant shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without Approval.
- 19.2 Where the Council has provided Approval to the placing of Sub-Contracts, copies of each Sub-Contract shall (and/or any additional information requested by the Council in relation to the Sub-Contractor shall) be supplied to the Council as soon as reasonably practicable following a request from the Council in relation to the same.
- 19.3 Sub-contracting any part of the Contract shall not relieve the Consultant of any of its obligations or duties under the Contract.
- 19.4 The Contractor shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.
- 19.5 The Council shall have the absolute right to require the Consultant to replace a Sub-Contractor for any reason whatsoever whether or not there are compulsory or non-compulsory grounds for doing so.
- 19.6 The Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- a) any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Council;
  - b) any private sector body which substantially performs the functions of the Council; or
  - c) any other body established by the Council to substantially perform any of the functions that had previously been performed by the Council; or
  - (d) as required by Law.
- provided that any such assignment, novation or other disposal shall not increase the burden of the Consultant's obligations under the Contract.
- 19.7 In respect of Sub-Contractors, the following shall apply:
- 19.7.1 prior to the Commencement Date, the Consultant shall inform the Council of the name, contact details, legal representatives and if relevant, the European Single Procurement Document, of each Sub-Contractor;
- 19.7.2 any changes to the information notified to the Council pursuant to Clause 19.7.1 including any change to the Sub-Contractor engaged by the Contractor in the provision of the Consultancy Services; and
- 19.7.3 the Council shall have the absolute right to require the Consultant to replace a Sub-Contractor for any reason whatsoever whether or not there are compulsory

or non- compulsory grounds for doing so pursuant to Regulation 57 of the Public Contracts Regulations 2015 (as amended).

## **20 MISCELLANEOUS**

- 20.1 Any reference to any Act of Parliament or to any other legislative instrument shall include a reference to any consolidation amendment or re-enactment of it.
- 20.2 Where the context so admits or requires, any reference to the masculine includes the feminine and vice versa, any reference to the neuter includes the masculine and feminine and vice versa, and any reference to the singular includes the plural and vice versa.
- 20.3 The headings are for ease of reference only and shall not affect the interpretation of this Contract.
- 20.4 Any forbearance or delay by either Party in relation to any breach or default in discharging any of the provisions of this Contract by the other Party shall not be construed as a waiver of that or any subsequent breach or default. Any waiver by either Party of any breach of or default in discharging the obligations of the other Party under this Contract shall apply only to that breach or default and shall not constitute a waiver of any rights of the waiving Party in relation to any subsequent breach or default. Any waiver by the Council shall only be effective if issued in writing and signed by the Authorised Officer.
- 20.5 This Contract constitutes the entire agreement of the Parties in relation to the Consultancy Services and supersedes any other agreement understanding or representation whether written or oral between the Parties regarding it. Any modification of this Contract shall be valid only if effected by an instrument in writing signed by duly authorised representatives of each Party.
- 20.6 Any official notice or demand required by this Contract to be served by any Party shall be in writing and shall be deemed to have been served if addressed to the most recent address notified to the other Party, and:
- i) if delivered personally, when left at the address of the other Party; or
  - ii) if sent by pre-paid first class post or recorded delivery, at 9.00am on the second Working Day after posting; or
  - iii) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 20.7 For the avoidance of doubt no official notice or demand under the Contract will be accepted by fax or e-mail.
- 20.8 This Contract is enforceable only by the original Parties to it, their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.



- 20.9 The Consultant shall ensure that whilst on Council premises its shall comply with the requirements of the Health and Safety at Work Act 1974 and other relevant legislation including regulations and codes of practice issued thereunder including any issued that may be issued by the Council.
- 20.10 If any provision of this Contract is prohibited by law or judged by a Court to be unlawful, void or unenforceable the provision shall, to the extent required, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of this Contract.
- 20.11 The Parties shall (at no cost to the other Party) co-operate fully with each other (including but not limited to the provision of documentation, statements and appearing as a witness) in connection with any legal proceedings, ombudsman enquiries, mediation or court proceedings in which either Party may become involved, or any relevant disciplinary hearing internal to the Council, arising out of or associated with the delivery of the Consultancy Services and where deemed necessary the Parties shall require its staff to give evidence in such enquiries, mediation, proceedings or hearings.
- 20.12 This Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the Laws of England and Wales. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter.
- 20.13 The following Clauses shall survive expiry or termination of this Contract:
- a) Clause 4 (Consequences of Termination and Expiry);
  - b) Clause 5 (Confidential Information);
  - c) Clause 6 Data Protection);
  - d) Clause 7 (Freedom of Information);
  - e) Clause 8 (Intellectual Property);
  - f) Clause 11 (Indemnities and Insurance);
  - g) Clause 12 (Dispute Resolution Procedure); and
  - h) Clause 19.13 (Law and Jurisdiction).
- 20.14 Each of the Parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.
- 20.15 The Consultant shall comply with the provisions of the Welsh Language Standards and any scheme or standards that the Council shall have in force from time to time.
- 20.16 The Consultant acknowledges that, under the Well-being of Future Generations (Wales) Act 2015 the Council is required to consider how services which the Council procures, improve the economic, social and environmental well-being of the area of the Council. The Consultant shall ensure that, in providing the Consultancy Services, it improves the economic, social and environmental well-being of the area of the Council in accordance with the requirements of the Service Specification.