

DATED

2024

**CONSULTANCY AGREEMENT RELATING TO THE PROVISION OF A VISITOR SURVEY
ON CANNOCK CHASE**

between

STAFFORD BOROUGH COUNCIL

and

[CONSULTANT COMPANY NAME]



Civic Centre
Riverside
Stafford
ST16 3AQ
Ref: 017612

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This agreement is dated

2024

Parties

- (1) **STAFFORD BOROUGH COUNCIL** of Civic Centre, Riverside, Stafford, ST16 3AQ (the **Client**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the **Consultant Company**)

BACKGROUND

- (A) The Client, on behalf of the Cannock Chase Special Area of Conservation (SAC) Partnership, sought proposals for a consultant to carry out the 2024 visitor survey on Cannock Chase by means of a public invitation to quote exercise.
- (B) The Consultant submitted a quotation for the provision of the services on [DATE] and the Client has, through a competitive process, selected the Consultant to provide these services and the Consultant has agreed to provide the services in accordance with the terms of this agreement.

Agreed terms

1. Interpretation

- 1.1 The following definitions and rules of interpretation apply in this agreement (unless the context requires otherwise).

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Capacity: as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

Client Property: all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the Business or affairs of the Client or its customers and business contacts, and any equipment, keys, hardware or software provided for the Consultant Company or the Individual's use by the Client during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Consultant Company or the

Individual on the computer systems or other electronic equipment of the Client, the Consultant Company or the Individual during the Engagement.

Commencement Date: [DATE OF COMMENCEMENT OF ENGAGEMENT]

Confidential Information: information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, clients, suppliers, products, affairs and finances of the Client for the time being confidential to the Client and trade secrets including, without limitation, technical data and know-how relating to the business of the Client or any of its suppliers, customers, clients, agents, distributors, management or business contacts, including (but not limited to) information that the Consultant Company or the Individual creates, develops, receives or obtains in connection with this Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (and regulations made thereunder) or any successor legislation, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Deemed Employment: an engagement to which section 61M(1)(d) of the Income Tax (Earnings and Pensions) Act 2003 applies.

Deliverable: any outputs of the Services and any other documents or materials provided by the Consultant Company to the Client as specified in Schedule 1 and any other documents and materials provided by the Consultant Company to the Client in relation to the Services (excluding the Consultant Company's equipment).

Engagement: the engagement of the Consultant Company by the Client on the terms of this agreement.

[Fee: means the fee of £[FIG] as detailed in the Consultant Company's Proposal at Schedule 4.]

FOIA: means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure Event: includes epidemic, pandemic, acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Consultant Company, the Individual, the Consultant Company's personnel or any other failure in the Consultant Company's supply chain.

Individual: the individual appointed under clause 2.1 to act on behalf of the Consultant Company;

Information: has the meaning given under section 84 of the FOIA.

Insurance Policies: means the insurance policies detailed in clause 10.

Intellectual Property Rights: patents, rights to Inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Invention: any invention, idea, discovery, development, improvement or innovation made by the Consultant Company or by the Individual in connection with the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

Off-payroll Working rules: the rules in Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003.

Request for Information: a request for information or an apparent request for information under the FOIA or the Environmental Information Regulations 2004.

Services: the services described in the Schedule 1.

Termination Date: the date of termination of this agreement, howsoever arising.

Works: all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software programs, inventions, ideas, discoveries, developments, improvements or innovations and all materials embodying them in whatever form, including but not limited to hard copy and electronic form, prepared by the Consultant Company or the Individual in connection with the provision of the Services.

- 1.2 The headings in this agreement are inserted for convenience only and shall not affect its construction.
- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.5 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

1.6 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

2. Term of Engagement

2.1 The Client shall engage the Consultant Company and the Consultant Company shall make available to the Client the Individual to provide the Services on the terms of this agreement.

2.2 The Engagement shall [commence OR be deemed to have commenced] on the Commencement Date and shall expire automatically upon completion of the Services, unless it is otherwise terminated:

- (a) as provided by the terms of this agreement; or
- (b) by either party giving to the other not less than four (4) weeks' prior written notice.

3. Duties and Obligations

3.1 During the Engagement the Consultant Company shall, and (where appropriate) shall procure that the Individual shall:

- (a) provide the Services, including the Deliverables, with all due care, skill and ability and use its or their best endeavours to promote the interests of the Client;
- (b) ensure that the Deliverables conform in all respects with, and are achieved by any deadlines specified in, Schedule 1 and that the Deliverables shall be fit for any purpose expressly or implicitly made known to the Consultant Company by the Client; and
- (c) promptly give to the Client all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services, including the Deliverables, or the business of the Client.

3.2 If the Individual is unable to provide the Services due to illness or injury, the Consultant Company shall advise the Client of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in accordance with clause 4 in respect of any period during which the Services are not provided or if Services are provided to an inadequate standard.

3.3 The Consultant Company shall use its reasonable endeavours to ensure that the Individual is available on reasonable notice to provide such assistance or information as the Client may require.

- 3.4 Unless it or they have been specifically authorised to do so by the Client in writing:
- (a) neither the Consultant Company nor the Individual shall have any authority to incur any expenditure in the name of or for the account of the Client; and
 - (b) the Consultant Company shall not, and shall procure that the Individual shall not, hold itself out as having authority to bind the Client.
- 3.5 The Consultant Company shall, and shall procure that the Individual shall, comply with all reasonable standards of safety and comply with the Client's health and safety procedures from time to time in force at any of the Client's premises at which the Services are provided and report to the Client any unsafe working conditions or practices.
- 3.6 The Consultant Company shall procure that the Individual shall comply with the Client's policies on use of information and communication systems, anti-harassment and bullying and equal opportunities.
- 3.7 Not used.
- 3.8 The Consultant Company may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that:
- (a) the Client will not be liable to bear the cost of such functions; and
 - (b) at the Client's request the third party shall be required to enter into direct undertakings with the Client, including with regard to confidentiality.
- 3.9 The Consultant Company shall, and shall procure that the Individual shall, promptly give to the Client all such information and documentation as it may reasonably require from time to time in order for the Client to determine whether the Engagement is or will be within the Off-payroll Working rules and is or will be Deemed Employment and, if the Client determines the Engagement is Deemed Employment, in order to comply with any obligation on the Client to deduct and account for tax or national insurance contributions from the fees due under clause 4. The Consultant Company shall, and shall procure that the Individual shall, promptly inform the Board of any material change to any information or documentation previously provided in compliance with this clause and shall also promptly provide any other information or documentation that it considers (or ought reasonably consider) to be materially relevant to determining whether the Engagement is Deemed Employment. Subject to clause 16, the Client reserves the right to amend the terms of the Engagement, and this agreement, if the Engagement is determined to be Deemed Employment.
- 3.10 The Consultant Company shall, and shall procure that the Individual shall:

- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 3.10(b), and will enforce them where appropriate;
- (d) promptly report to the Client any request or demand for any undue financial or other advantage of any kind received by the Consultant Company or the Individual in connection with the performance of this agreement;
- (e) immediately notify the Client if a foreign public official becomes an officer or employee of the Consultant Company or acquires a direct or indirect interest in the Consultant Company (and the Consultant Company warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement);
- (f) ensure that all persons associated with the Consultant Company or other persons who are performing services in connection with this agreement comply with this clause 3.10 ; and
- (g) within two (2) months of the date of this agreement, and annually thereafter, certify to the Client in writing signed by an officer of the Consultant Company, compliance with this clause 3.10 by the Consultant Company and all persons associated with it, including the Individual, and all other persons for whom the Consultant Company is responsible under clause 3.10(f). The Consultant Company shall provide such supporting evidence of compliance as the Client may reasonably request.

3.11 Failure to comply with clause 3.10 may result in the immediate termination of this agreement.

3.12 For the purposes of clause 3.10, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6(5) and 6(6) of that Act and section 8 of that Act respectively.

3.13 The Consultant Company shall, and shall procure that the Individual shall:

- (a) not engage in any activity, practice or conduct which would constitute either:

- (i) a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act; or
 - (ii) a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;
- (b) have and shall maintain in place throughout the term of this agreement such policies and procedures as are reasonable in all the circumstances to prevent the facilitation of tax evasion by another person (including without limitation employees of the Consultant Company), in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017;
- (c) promptly report to the Client any request or demand received by the Consultant Company or the Individual from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017 in connection with the performance of this agreement;
- (d) ensure that all persons associated with the Consultant Company or other persons who are performing services in connection with this agreement comply with this clause 3.13; and
- (e) within two (2) months of the date of this agreement, and annually thereafter, certify to the Client in writing signed by an officer of the Consultant Company compliance with this clause 3.13 by the Consultant Company and all persons associated with it, including the Individual, and all other persons for whom the Consultant Company is responsible under clause 3.13(d). The Consultant shall provide such supporting evidence of compliance as the Client may reasonably request.

3.14 Failure to comply with clause 3.13 may result in the immediate termination of this agreement.

4. Fees

4.1 The Client shall pay the Consultant Company the Fee exclusive of VAT, less any deductions for income tax and national insurance contributions as required by law, in accordance with the payment stages set out in Schedule 3. The Consultant Company shall submit to the Client a valid invoice at each relevant stage of the Services as set out in Schedule 3, for the Services during the relevant stage in each case giving details of the Services provided, the Deliverable achieved to the satisfaction of the Client in accordance with Schedule 1, the dates on the which the Services were provided and the amount of the fee payable (plus VAT, if applicable) for the achievement of the Deliverable.

The Fee set out in this clause 4.1 shall only be payable to the Consultant Company following the completion of a the relevant payment stage as set out in Schedule 3 to the

reasonable satisfaction of the Client. Subject to clause 4.3, the Consultant Company shall submit invoices, in each case, within 14 days of the completion of a relevant payment stage to the satisfaction of the Client.

- 4.2 In consideration of the provision of the Services, and subject to clause 4.3, the Client shall pay each invoice submitted by the Consultant Company in accordance with clause 4.1 within thirty (30) days of receipt.
- 4.3 Should the Client become required by law to deduct income tax and national insurance contributions from the fees:
- (a) the Client shall inform the Consultant Company of the deadline by which invoices must be submitted for payment to be included in the next monthly payroll and payment shall not be made until the Consultant Company has supplied to the Client all relevant information, in accordance with clause 3.9, required for the purpose of making the relevant deductions.
 - (b) the Consultant Company shall, if the period over which Services have been provided bridges 6 April 2025, ensure that the invoice apportions the applicable fee on a just and reasonable basis between the period before and the period after that date.
- 4.4 The Client shall be entitled to deduct from the fees (and any other sums) due to the Consultant Company any sums that the Consultant Company or the Individual may owe to the Client at any time.
- 4.5 Payment in full or in part of the fees claimed under clause 4 shall be without prejudice to any claims or rights of the Client against the Consultant Company or the Individual in respect of the provision of the Services.
- 4.6 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 14. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of thirty (30) days after resolution of the dispute between the parties.
- 4.7 Subject to clause 4.6, interest shall be payable on the late payment of any undisputed charges properly invoiced under this agreement, the other party shall be entitled to charge interest on the unpaid amount specified in that invoice at the rate of 3% per annum over the base rate for the time being of the Bank of England from the due date until receipt of the amount. The Consultant Company shall not suspend the supply of the Services if any payment is overdue.

5. Expenses

The Consultant Company shall bear its own expenses incurred in the course of the Engagement.

6. Other activities

Nothing in this agreement shall prevent the Consultant Company or the Individual from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that:

- (a) such activity does not cause a breach of any of the Consultant Company's obligations under this agreement; and
- (b) the Consultant Company shall give priority to the provision of the Services to the Client over any other business activities undertaken by it during the course of the Engagement.

7. Confidential information and Client property

7.1 The Consultant Company acknowledges that in the course of the Engagement it and the Individual will have access to Confidential Information. The Consultant Company has therefore agreed to accept the restrictions in this clause 7.

7.2 The Consultant Company shall not, and shall procure that the Individual shall not (except in the proper course of its or their duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use its best endeavours to prevent the publication and disclosure of) any Confidential Information. This restriction does not apply to:

- (a) any use or disclosure authorised by the Client or required by law; or
- (b) any information which is already in, or comes into, the public domain otherwise than through the Consultant Company's or the Individual's unauthorised disclosure.

7.3 At any stage during the Engagement, the Consultant Company will promptly on request return to the Client all and any Client Property in its or the Individual's possession.

7.4 Nothing in this clause 7 shall prevent the Consultant Company (or the Individual) or the Client (or any of its officers, employees, workers or agents) from:

- (a) reporting a suspected criminal offence to the police or any law enforcement agency or co-operating with the police or any law enforcement agency regarding a criminal investigation or prosecution; or

- (b) doing or saying anything that is required by HMRC or a regulator, ombudsman or supervisory authority; or
- (c) whether required to or not, making a disclosure to, or co-operating with any investigation by, HMRC or a regulator, ombudsman or supervisory authority regarding any misconduct, wrong-doing or serious breach of regulatory requirements (including giving evidence at a hearing); or
- (d) complying with an order from a court or tribunal to disclose or give evidence; or
- (e) making any other disclosure as required by law.

7A. Freedom of Information

7A.1 The Consultant Company acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Client to enable the Client to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
- (b) transfer to the Client all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt;
- (c) provide the Client with a copy of all Information belonging to the Client requested in the Request for Information which is in its possession or control in the form that the Client requires within 5 Business Days (or such other period as the Client may reasonably specify) of the Client's request for such Information; and
- (a) not respond directly to a Request for Information unless authorised in writing to do so by the Client.

7A.2 The Consultant Company acknowledges that the Client may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Consultant Company or the Services (including commercially sensitive information) without consulting or obtaining consent from the Consultant Company. In these circumstances the Client shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Consultant Company advance notice, or failing that, to draw the disclosure to the Consultant Company's attention after any such disclosure, but the Client shall be responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

8. Data Protection

No Personal Data is being processed by either party under this agreement, but should this change in the future, the parties shall agree appropriate data processing agreements from time to time that honour each parties' obligations under the Data Protection Legislation and ensure that all processing of Personal Data performed by them and their employees or agents under this agreement shall be in accordance with the Data Protection Legislation. This clause does not relieve, remove or replace a party's obligations or rights under the Data Protection Legislation and each party shall be liable for their own act and/or omission in respect of the Data Protection Legislation.

9. Intellectual Property

- 9.1 The Consultant Company warrants to the Client that it has obtained from the Individual a written and valid assignment of all existing and future Intellectual Property Rights in the Works, Deliverables and the Inventions and of all materials embodying such rights and a written irrevocable waiver of all the Individual's statutory moral rights in the Works, to the fullest extent permissible by law, and that the Individual has agreed to hold on trust for the Consultant Company any such rights in which the legal title has not passed (or will not pass) to the Consultant Company. The Consultant Company agrees to provide to the Client a copy of this assignment on or before the date of this agreement.
- 9.2 The Consultant Company hereby assigns to the Client all existing and future Intellectual Property Rights in the Works, Deliverables and the Inventions and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this agreement, the Consultant Company holds legal title in these rights and inventions on trust for the Client.
- 9.3 The Consultant Company undertakes to the Client:
- (a) to notify to the Client in writing full details of all Inventions promptly on their creation;
 - (b) to keep confidential the details of all Inventions;
 - (c) whenever requested to do so by the Client and in any event on the termination of the Engagement, promptly to deliver to the Client all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Works and the process of their creation which are in its or the Individual's possession, custody or power;
 - (d) not to register nor attempt to register any of the Intellectual Property Rights in the Works, nor any of the Inventions, unless requested to do so by the Client; and

- (e) to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the Works and the Inventions has passed, or will pass, to the Client,

and confirms that the Individual has given written undertakings in the same terms to the Consultant Company.

9.4 The Consultant Company warrants that:

- (a) it has not given and will not give permission to any third party to use any of the Works or the Inventions, nor any of the Intellectual Property Rights in the Works;
- (b) it is unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and
- (c) the use of the Works or the Intellectual Property Rights in the Works by the Client will not infringe the rights of any third party,

and confirms that the Individual has given written undertakings in the same terms to the Consultant Company.

9.5 The Consultant Company agrees to indemnify the Client and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Client, or for which the Client may become liable, with respect to any intellectual property infringement claim or other claim relating to the Works or Inventions supplied by the Consultant Company to the Client during the course of providing the Services. The Consultant Company shall maintain adequate liability insurance coverage and shall supply a copy of the relevant certificate of insurance to the Client on request. The Client may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Consultant Company.

9.6 The Consultant Company acknowledges that no further remuneration or compensation other than that provided for in this agreement is or may become due to the Consultant Company in respect of the performance of its obligations under this clause 9.

9.7 The Consultant Company undertakes to execute all documents, make all applications, give all assistance and do all acts and things, at the expense of the Client and at any time either during or after the Engagement, as may, in the opinion of the Client, be necessary or desirable to vest the Intellectual Property Rights in, and register or obtain patents or registered designs in, the name of the Client and to defend the Client against claims that works embodying Intellectual Property Rights or Inventions infringe third party rights, and otherwise to protect and maintain the Intellectual Property Rights in the Works. The Consultant Company confirms that the Individual has given written undertakings in the same terms to the Consultant Company.

10. Insurance and Liability

- 10.1 The Consultant Company shall have liability for and shall indemnify the Client for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Consultant Company or the Individual of the terms of this agreement including any negligent or reckless act, omission or default in the provision of the Services and shall accordingly maintain in force during the Engagement full and comprehensive Insurance Policies.
- 10.2 Subject to clause 10.5, the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant Company to the Client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause, including reasonable legal costs, so that the total aggregate liability of the Consultant Company to the Client in each Contract Year shall not exceed two million pounds (£2,000,000). This limitation shall apply to any and all liability or cause of action unless otherwise prohibited by law.
- 10.3 Neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with this agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 10.4 Each party shall at all times take reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.
- 10.5 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
- (a) bribery, fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by its negligence;
 - (c) breach of any obligation as to title implied by statute;
 - (d) breach of clauses 7 (Confidential information and Client property), 8 (Data Protection), 9 (Intellectual Property) and 13.2 of this agreement; or
 - (e) any other act or omission, liability for which may not be limited under any applicable law.
- 10.6 The Consultant Company shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to the Client with the following minimum levels of cover:

- (a) Employer's Liability Insurance with a limit of indemnity of not less than £5,000,000 (five million pounds) in relation to any one claim or series of claims; and
 - (c) Public Liability Insurance with a limit of indemnity of not less than £5,000,000 (five million pounds) in relation to any one claim or series of claims.
- 10.7 The Consultant Company shall on request supply to the Client copies of the relevant certificates of insurance to evidence such Insurance Policies are in place and evidence that the relevant premiums have been paid.
- 10.8 The Consultant Company shall notify the insurers of the Client's interest and shall cause the interest to be noted on the Insurance Policies together with a provision to the effect that, if any claim is brought or made by the Client against the Consultant Company in respect of which the Consultant Company would be entitled to receive indemnity under any of the Insurance Policies, the relevant insurer will indemnify the Client directly against such claim and any charges, costs and expenses in respect of such claim. If the relevant insurer does not so indemnify the Client, the Consultant Company shall use all insurance monies received by it to indemnify the Client in respect of any claim and shall make good any deficiency from its own resources.
- 10.9 The Consultant Company shall comply (and shall procure that the Individual complies) with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way, or if the Consultant Company is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Consultant Company shall notify the Client without delay.

11. Termination

- 11.1 Notwithstanding the provisions of clause 2.2, the Client may terminate the Engagement with immediate effect without notice and without any liability to make any further payment to the Consultant Company (other than in respect of amounts accrued before the Termination Date) if at any time:
 - (a) the Consultant Company or the Individual commits any gross misconduct affecting the business of the Client;
 - (b) the Consultant Company or, where applicable, the Individual commits any serious or repeated breach or non-observance of any of the provisions of this agreement or refuses or neglects to comply with any reasonable and lawful directions of the Client;
 - (c) the Individual is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);

- (d) the Consultant Company or the Individual is, in the reasonable opinion of the Board, negligent or incompetent in the performance of the Services;
- (e) the Individual is declared bankrupt or makes any arrangement with or for the benefit of their creditors or has a county court administration order made against them under the County Court Act 1984;
- (f) the Consultant Company makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding-up order is made or an administrator or receiver is appointed in relation to the Consultant Company;
- (g) not used;
- (h) the Individual does not own all of the issued share capital (from time to time) of the Consultant Company;
- (i) the Engagement is determined by the Client or, subsequently, HM Revenue & Customs to be Deemed Employment;
- (j) the Consultant Company or the Individual breaches the obligations contained in clause 3.10 or clause 3.13;
- (k) the Consultant Company or the Individual commits any breach of the Client's policies and procedures;
- (l) the Consultant Company or the Individual commits any offence under the Bribery Act 2010 or the Criminal Finances Act 2017; or
- (m) the Consultant Company commits a breach of clause 16 (Modern Slavery).

11.2 The rights of the Client under clause 11.1 are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this agreement on the part of the Consultant Company as having brought the agreement to an end. Any delay by the Client in exercising its rights to terminate shall not constitute a waiver of these rights.

11.3 In the event of a Force Majeure Event pursuant to clause 15, either party may terminate the agreement in accordance with clause 15.7.

12. Obligations on Termination

On the Termination Date the Consultant Company shall, and shall procure that the Individual shall:

- (a) immediately deliver to the Client all Client Property and original Confidential Information which is in its or their possession or under its or their control;

- (b) subject to the Client's data retention guidelines, irretrievably delete any information relating to the business of the Client stored on any magnetic or optical disk or memory (including but not limited to any Confidential Information) and all matter derived from such sources which is in its or their possession or under its or their control outside the premises of the Client. This obligation includes requiring any Substitute to delete such information where applicable. For the avoidance of doubt, the contact details of business contacts made during the Engagement are regarded as Confidential Information and, as such, must be deleted from personal social or professional networking accounts; and
- (c) provide a signed statement that it or they have complied fully with its or their obligations under this clause 12, together with such evidence of compliance as the Client may reasonably request.

13. Status

- 13.1 The relationship of the Consultant Company (and the Individual) to the Client will be that of independent contractor and nothing in this agreement shall render it (nor the Individual) an employee, worker, agent or partner of the Client and the Consultant Company shall not hold itself out as such and shall procure that the Individual shall not hold themselves out as such.
- 13.2 The Consultant Company shall be fully responsible for and shall indemnify the Client for and in respect of the following:
 - (a) subject to clause 13.3, any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from a determination that the Engagement is Deemed Employment or made in connection with either the performance of the Services or any payment or benefit received by the Individual in respect of the Services, where such recovery is not prohibited by law. The Consultant Company shall further indemnify the Client against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Client in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Client's negligence or wilful default;
 - (b) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Individual or any Substitute against the Client arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of the Client.
- 13.3 The indemnity in clause 13.2(a) does not apply to any income tax or National Insurance contributions deducted by the Client if the Engagement is Deemed Employment and the

Client makes the deductions from the fees due under clause 4 prior to payment to the Consultant Company.

- 13.4 The Client may at its option satisfy the indemnity in clause 13.2 (in whole or in part) by way of deduction from payments due to the Consultant Company.
- 13.5 The Consultant Company warrants that it is not, nor will it prior to the cessation of this agreement, become a managed service company within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

14. Dispute Resolution

- 14.1 Any disputes which may arise as to the terms of this agreement shall be dealt with in accordance with the provisions of this clause 14.
- 14.2 If any dispute arises between the parties in relation to this agreement, then either party may request the other to participate in a meeting of their respective senior managers, in order to discuss the dispute and to agree a strategy to resolve it. The parties shall then liaise in good faith to arrange and implement the meeting within ten (10) working days and shall exchange statements at least three (3) clear working days prior to the date of the meeting, setting out their respective views of the issues, which are in dispute.
- 14.3 If, notwithstanding any steps taken by the parties pursuant to clause 14.2, the dispute between them remains unresolved within one (1) month of the date on which the dispute arose, then the matter shall be referred to the Executive Director or an equivalent role of the respective parties, setting out the respective views of the issues and for the purpose of resolution of the dispute. If within fourteen (14) days, or such longer period as the parties may agree, of such request they fail to meet or resolve the dispute then clause 14.4 will apply.
- 14.4 If, notwithstanding any steps taken by the parties pursuant to clause 14.3, the dispute between them remains unresolved within the time period previously agreed then at the request of either party, the dispute shall be referred to an independent and professional mediator (the "**Mediator**") to be nominated without delay by agreement between the parties. Any such mediation shall be carried out in confidence and on a without prejudice basis in relation to any subsequent proceedings.
- 14.5 If the parties are unable to agree on a Mediator within 7 days of the request by one party to refer the dispute to mediation, they shall apply to the Centre for Dispute Resolution ("**CEDR**") to appoint a Mediator.
- 14.6 The Mediator appointed under clause 14.4 shall:

- 14.6.1 set a strict (but nevertheless fair) timetable, not exceeding two (2) months in its entirety, with which the parties must comply in order to secure a resolution of the dispute without undue delay or expense;
 - 14.6.2 invite the parties (or their respective agents) to submit written representations to him to explain their respective cases in relation to the dispute;
 - 14.6.3 disclose any such representations to the other party so that they can submit written comments on the same to the Mediator;
 - 14.6.4 have power to determine how the costs of the reference shall be borne by the parties and may require either of the parties to bear more than one half of the costs if the Mediator concludes (acting reasonably) that either of the parties has acted unreasonably in relation to the dispute.
- 14.7 If the parties reach agreement on the resolution of their dispute pursuant to the provisions of any of clauses 14.4 to 14.6 (inclusive) then the parties shall record the agreement of their dispute in writing and shall sign the same and the signed document shall then form a legally binding agreement.

15 Force Majeure

- 15.1 Subject to the remaining provisions of this clause 15, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.
- 15.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 15.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

- 15.4 The Consultant Company cannot claim relief if the Force Majeure Event is one where a reasonable consultant should have foreseen and provided for the cause in question.
- 15.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Consultant Company is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with best industry practice.
- 15.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 15.7 Either party may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the other party if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 60 consecutive days.

16. Modern Slavery

- 16.1 In performing its obligations under the agreement, the Consultant Company shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
 - (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
 - (c) include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause 16;
 - (d) notify the Client as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement; and
 - (e) maintain a complete set of records to trace the supply chain of all Services provided to the Client in connection with this agreement; and permit the Client and its representatives to inspect the Consultant Company's premises, records,

and to meet the Consultant Company's personnel to audit the Consultant Company's compliance with its obligations under this clause 16.

16.2 The Consultant Company represents and warrants that it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

16.3 The Client may terminate this agreement with immediate effect by giving written notice to the Consultant Company if the Consultant Company commits a breach of this clause 16.

17. Notices

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

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at the address given in this agreement or as otherwise notified in writing to the other party; or
- (b) sent by e-mail.

17.2 Unless proved otherwise, any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the address given in this agreement or given to the addressee; or
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by e-mail, at the time of transmission, provided the e-mail is dispatched to the correct e-mail address without any error message.

17.3 If deemed receipt under clause 17.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause 17.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

17.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

18. Entire Agreement

18.1 This agreement together with any documents referred to in it, constitutes the entire agreement between the parties and supersedes and extinguishes all previous

agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.2 Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

18.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

18.4 Nothing in this clause shall limit or exclude any liability for fraud.

19. Variation

No variation of this agreement or of any of the documents referred to in it shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20. Counterparts

20.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

21. Third Party Rights

21.1 A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

21.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

22. Sub-Contracting and Assignment

22.1 This agreement is personal to the Consultant Company and any right or obligation arising under it may only be sub-contracted, assigned or otherwise transferred with the prior consent in writing of the Client.

22.2 In the event that the Consultant Company enters into any sub-contract in connection with this agreement it shall:

- (a) remain responsible to the Client for the performance of its obligations under the agreement notwithstanding the appointment of any sub-contractor and be responsible for the acts omissions and neglects of its sub-contractors;

- (b) impose obligations on its sub-contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the sub-contractor complies with such terms; and
- (c) provide a copy, at no charge to the Client, of any such sub-contract on receipt of a request for such by the Client.

23. Governing Law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

24. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

SIGNED for and on behalf of
STAFFORD BOROUGH COUNCIL

Authorised Signatory:

Print name:

Position:

SIGNED for and on behalf of
[CONSULTANT NAME]

Authorised Signatory :

Print name:

Position:

Schedule 1 Services

[INSERT SPECIFICATION/BRIEF]

Schedule 2 Not Used

Schedule 3 Payment Instalments

Payment is to be made to the Consultant Company in stages upon the following outputs:

Stage 1	To be invoiced following the conclusion of Stage 1 – Completion of the draft report, for 50% of the total fee.
Stage 2	To be invoiced following the conclusion of Stage 2 – Completion of the final report, for 40% of the total fee.
Stage 3	To be invoiced following the conclusion of Stage 3 – Sign off by the Client, for the remaining 10% of the total fee.
Total Fee	£

Schedule 4 Consultant Company's Proposal

[INSERT HERE]

