

TERMS & CONDITIONS OF CONTRACT

1. DEFINITIONS

“Council”	means Monmouthshire County Council and where the context permits, reference to the Council in these Terms and Conditions shall include reference to an employee of the Council.
“Contract Sum”	means the total fixed lump sum for the Project referred to in the Form of Tender to include all costs, labour, equipment, travelling materials and all other costs, charges expenses and outgoings of wherever nature incurred by the Provider in performing its obligations under this contract
“Key Personnel”	means any person named in the tender as key personnel or any person who the Council notifies the Consultant is to be regarded as key personnel during the course of the Project.
“Premises”	means any property owned or leased or otherwise in the possession of the Council consisting of offices, buildings etc, which are used by the Consultant, whether exclusively or together with Council officers, for the proper performance of the Services.
“Specification”	means the Brief and Scope of Services for the Consultant contained in the Contract Documentation;
“Project”	means the consultancy services described in the specification documentation and any associated documentation.
“Parties”	means the Council and the Consultant.
“Consultant”	means the consultant named in the Agreement appointed by the Council to provide the Services.
“Terms and Conditions”	means these terms and conditions for the supply of consultancy services.

2. GENERAL

- 2.1 These Terms and Conditions together with the tender documentation and any other document, plan or specification referred to in the tender document constitute the contract between the Parties for the Project (“the Contract”).

2.2 The Contract constitutes the entire agreement between the Parties relating to the Project and replaces all previous negotiations, agreements, understandings and representations whether oral or in writing. However nothing in the Contract shall limit or exclude any liability for fraud.

2.3 Nothing in this Contract shall have the effect of making the Consultant a servant or employee of the Council.

3. THE PROJECT

3.1 The Consultant shall carry out and complete the Project:

3.1.1 in accordance with the specification;

3.1.2 with reasonable skill, care and diligence;

3.1.3 to the reasonable satisfaction of the Council

3.1.4 (where applicable) using staff or agents with appropriate skills and qualifications.

3.2 The Consultant shall not place or cause to be placed any orders with third parties or otherwise incur any liabilities to third parties in the name of the Council without the prior written consent of the Council.

4. TIME OF PERFORMANCE

4.1 The Consultant shall carry out the Project by the date or in accordance with the timescales set out in the specification or in accordance with any timescales reasonably notified to the Consultant by the Council.

4.2 The Consultant shall submit such detailed programmes of work and progress reports as the Council may from time to time require.

4.3 The Consultant shall notify the Council immediately if it becomes aware of any event that it believes is likely to delay or impede the Project.

4.4 In the event that the Consultant fails to meet a date or dates set out in the specification or comply with the timescales contained in the specification it shall, on the request of the Council, and without prejudice to the Council's other rights and remedies, arrange to provide all such additional resources as are necessary to fulfill its obligations at no additional cost to the Council.

5. REJECTION OF PROJECT

5.1 The Council may at any time reject anything delivered or provided as part of the Project which, in the reasonable view of the Council, does not comply with the Contract in any material way.

- 5.2 If the Council rejects all or part of the Project under Condition 5.1 above, it shall serve a notice on the Consultant stating the reasons for such rejection.
- 5.3 Following receipt of a notice of rejection of the Services, the Consultant shall have 7 (seven) working days (or such other period as the Parties may agree in writing) during which the Consultant shall correct the faults which caused the notice of rejection to be issued.
- 5.4 Without prejudice to the Council's other rights under this Contract, if the Consultant fails to correct the faults which caused the notice of rejection to be issued to the reasonable satisfaction of the Council within 7 (seven) working days (or such longer period as the Parties have agreed), the Council shall be entitled to terminate this Contract.

6. CONSULTANT'S PERSONNEL AND SECURITY

- 6.1 The Consultant shall make Key Personnel available for the purposes of the Project and shall not make any changes in the Key Personnel without the prior written approval of the Council.
- 6.2 If and when requested by the Council, the Consultant shall provide the Council with a list of the names and addresses of any persons being used in the Project or any part of it specifying in each case the capacities in which they are involved and giving such other particulars, evidence of identity and other supporting evidence as the Council may reasonably require.
- 6.3 The Consultant shall comply with any notice reasonably given by the Council stating that a person named in the notice is not to be involved any further in the provision of the Project. The Consultant shall bear the cost of complying with such a notice.
- 6.4 Where the Project is being carried out at Premises owned or occupied by the Council:
 - 6.4.1 the Consultant shall comply and shall ensure that its staff, sub-contractors and agents comply with any rules or regulations applied by the Council in relation to security at its premises;
 - 6.4.2 The Council gives the Consultant notice that any person is not to be admitted to or is to be removed from its land or premises or is not to become involved in or is to be removed from involvement in the Project, the Consultant shall take all reasonable steps to comply with such notice and shall bear the cost of any such notice. The Consultant shall ensure that any person who is removed is replaced by someone of equivalent qualifications and experience.
- 6.5 If the Consultant employs anyone for the purposes of providing the Project, the Consultant shall not unlawfully discriminate within the meaning and scope of the provisions of any act of Parliament relating to discrimination in employment.

7. PAYMENT

- 7.1 In consideration of the carrying out of the Project by the Consultant the Council shall pay the Consultant the contract sum upon satisfactory completion of the services as set out in the specification.
- 7.2 The Consultant shall submit an invoice for the Project to the Council's address. The invoice shall contain the Order Number, a description of the part of the Project to which it refers and the applicable Fees.
- 7.4 The Council shall pay the Consultant within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Council.
- 7.5 In addition to the contract sum, the Council shall pay the Consultant a sum equivalent to any Value Added Tax chargeable in respect of the Project. Value Added Tax shall be shown as a separate item on the Consultant's invoice.
- 7.6 The Consultant shall be entirely responsible for the payment of all and any income tax, national insurance contributions and any similar liabilities on any Fees earned under this Contract.

8. RECOVERY OF SUMS DUE

- 8.1 If any sum is recoverable from or payable by the Consultant under the Contract, that sum may be deducted from any sum then due or which at a later date becomes due to the Consultant under the Contract or under any other agreement with the Council.

9. AUDIT

- 9.1 The Consultant shall keep and maintain until two years after the Contract has been completed records to the satisfaction of the Council of all costs and expenditures connected with the Project which are reimbursable by the Council. This shall include records of the hours worked and costs incurred by the Consultant and the costs of any employees of the Consultant paid for by the Council. The Consultant shall on request afford the Council or any person reasonably specified by the Council access to those records.

10. INTELLECTUAL PROPERTY

- 10.1 Any and all Intellectual Property Rights, including Rights in any precedents, developed under the Agreement or arising from the provision of the Services by the Consultant shall belong to the Council and the Consultant agrees that it shall execute or cause to be executed (by its staff if necessary) all deeds,

documents and acts required to vest such Intellectual Property Rights in the Council.

- 10.2 The Consultant shall not disclose and shall ensure that his employees do not disclose any information of a confidential nature obtained by him by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.
- 10.3 The provisions of this Condition 10 shall apply during the continuance of this Contract and after its termination howsoever arising
- 10.4 The Consultant shall not in connection with the performance of the Services, use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any Intellectual Property Rights.

10.5 Existing IPR shall remain the sole property of the party who owned, acquired or developed such intellectual property. Nothing in this Agreement shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

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11. HEALTH AND SAFETY

- 11.1 The Consultant shall at all times comply with the requirements of any legal provisions pertaining to the health and safety of its own staff, the Council's employees and others who may be affected by its performance of the Services.
- 11.2 The Consultant shall ensure that its safety policy has been drawn to the attention of all of its members of staff, and that all of its management and supervisory staff have a detailed knowledge of this policy and that they will observe the policy and require the Consultant's staff to comply fully with its provisions.

12. CONFLICTS OF INTEREST

- 12.1 The Consultant shall take all necessary steps to ensure that they shall not have and shall avoid any conflicts of interest between the Council and any other of the Consultants clients.
- 12.2 On receiving an instruction from the Council, the Consultant shall examine its records and other relevant information so far as necessary and shall determine whether or not there is a conflict.
- 12.3 If there should be a conflict of any instance, the Consultant shall forthwith notify the Council.

13. INDEMNITY AND INSURANCE

- 13.1 Without prejudice to any rights or remedies of the Council the Consultant shall remain liable to the Council against all legally enforceable, reasonable foreseeable and fully mitigated actions, demands, losses, expenses and costs (including legal costs on a solicitor and client basis) which the Council may suffer or incur as a result of or in connection with any damage to property or any injury (whether fatal or otherwise) to any person which may result directly ~~or indirectly~~ from any negligence or breach of this Contract by the Consultant.
- 13.2 The Consultant (if an individual) warrants and represents that he is regarded by both the Inland Revenue and the Department of Works and Pensions as self-employed and accordingly shall indemnify the Council against any tax, national insurance contributions or similar liability which may arise in relation to this Contract.
- 13.3 The Consultant warrants that it has in place with a reputable insurance company a policy or policies of insurance relating to all matters that are the subject of indemnities and undertakings on the part of the Consultant contained in this Contract. In particular, unless the Council agrees that such insurance is unnecessary the Consultant warrants that the work done in relation to the Project is covered by a policy of professional indemnity insurance. At the request of the Council the Supplier shall produce the relevant policy of insurance together with evidence of payment of its latest premium.

14 VARIATION

- 14.1 The Council shall be entitled to issue to the Consultant, and the Consultant shall be obliged to comply with, any Variation Instruction given in writing requiring the Consultant to do (or as appropriate refrain from doing) all or any of the following:
- 14.1.1 to vary the Contract Documentation and to perform the Services in accordance with the Contract Documentation as so varied;
 - 14.1.2 to omit and/or to cease to perform any part of the Services for such period or periods as the Council may direct;
 - 14.1.3 to perform such additional services other than those contained in the Contract Documentation as the Council may reasonably require;
- 14.2 Where the Agreement is so varied the value of that part of the Services so varied (as determined where possible by reference to the appropriate rates contained in or derived from the Schedule of Rates and/or the sum stated in the Form of Tender) shall be deducted from or added to the sums due to the Consultant, and the Contract Documentation shall be deemed to be amended accordingly.
- 14.3 If required to by the Council, the Consultant shall prepare a detailed price estimate of the cost of any proposed variation, including a breakdown of how

the costing has been calculated. Such estimate shall be provided to the Council without charge.

- 14.4 In the event that any modifications or variations are required by the Council for the Consultant to perform the Services or any part thereof to the standards required by the Contract Documentation, these modifications and variations shall be carried out promptly and at no additional cost to the Council, irrespective of whether they require the use of additional staff or other resources by the Consultant to achieve the requisite standards.

15. ASSIGNMENT OR SUB-CONTRACTING

- 15.1 The Consultant shall not assign or sub-contract any part of the Project without the written consent of the Council.
- 15.2 No sub-contracting of this Contract shall in any way relieve the Consultant of its obligations under the Contract.

16. RIGHTS OF THIRD PARTIES

- 16.1 This Contract shall not create any rights which are enforceable by anyone other than the Parties.

17. TERMINATION

Without prejudice to any other rights and remedies it may possess:

- 17.1 The Council shall be entitled forthwith upon the happening of any of the following events to terminate the Agreement by notice in writing, such events being:
- 17.1.1 discovery of a material misrepresentation by the Consultant during the tendering process; or
 - 17.1.2 persistent minor breaches of the Agreement by the Consultant as evidenced by the service of Default Notices under Section G (Performance & Breach); or
 - 17.1.3 the Consultant having failed to perform a substantial part of the Services; or
 - 17.1.4 the Consultant suffering any distress or process of execution to be levied on its goods; or
 - 17.1.5 if the Consultant consists of one or more individuals, any one of them dying, committing any act of bankruptcy or having a bankruptcy order made against him/her; or

- 17.1.6 entering into (whether an individual or a body corporate) any arrangement, agreement or composition with and for the benefit of its creditors (including a voluntary arrangement under the provisions of the Insolvency Act 1986); or
 - 17.1.7 if the Consultant consists of a body corporate, the Consultant or its parent company having a winding-up order made or (except for the purpose of amalgamation or reconstruction) a resolution passed for voluntary winding-up; or having an application made for the appointment of an administrator, administrative receiver or receiver, or an administrator, administrative receiver or receiver having been appointed over the whole or any part of its business and/or assets; or
 - 17.1.8 having a provisional liquidator, receiver or manager of the whole or any part of its business appointed; or having possession taken of any of its property comprised in a floating charge by or on behalf of the holders of any debentures secured by the floating charge; or
 - 17.1.9 an intervention in the affairs of the Consultant by the Law Society; or
 - 17.1.10 operation by the Consultant without relevant insurance; or
 - 17.1.11 the conviction of a partner or a member of the Consultant for relevant criminal offences including; or
 - 17.1.12 having committed any other breach of contract which in the opinion of the Supervising Officer justifies termination of the Agreement, notwithstanding whether any Default Notices have in fact been served
- 17.2 Upon such termination, in addition to such consequences as are set out in the other provisions of the Agreement:
- 17.2.1 the Consultant shall be deemed to be in breach of the Agreement;
 - 17.2.2 the Consultant shall forthwith cease to perform any of the Services;
 - 17.2.3 the Consultant shall be liable forthwith to compensate the Council for any loss or damage it has sustained in consequence of any antecedent breaches of contract by the Consultant;
 - 17.2.4 the Consultant shall fully and promptly indemnify and compensate the Council in respect of the cost of causing to be performed such Services as would have been performed by the Consultant during the remainder of the Contract Period, (to the extent that such cost exceeds such sums as would have been lawfully payable to the Consultant for performing such Services) such costs to include all costs of closing out the Agreement and entering into new agreement(s) with replacement Firm(s). The Council shall be at

liberty to have such Services performed by any persons (whether or not servants of the Council) as the Council shall in its sole discretion think fit;

- 17.2.5 The Council shall be under no obligation to make any further payment to the Consultant and shall be entitled to retain any payments which may have fallen due to the Consultant before termination until the Consultant has paid in full to the Council all sums due under or arising from the Agreement, or to deduct there from any sum due from the Consultant;
- 17.2.6 The Council shall have the power to deduct from any monies owing to the Consultant such sums as are due to the Council or may thereafter become due to the Council under the Agreement or any other agreement between the parties;
- 17.2.7 The Consultant shall forthwith vacate any Council Premises;
- 17.2.8 The Consultant shall forthwith release and hand over to the Council any and all Council property, including but not limited to equipment, supplies, records and work-in-progress, deeds, completed files not already handed over to the Council, whether in the form of documents, plans, calculations, drawings, computer data or other material in any medium.

17.3 For the avoidance of doubt, the rights of the Council under this Clause are in addition to any other rights or remedies the Council may have pursuant to any parent company guarantee or performance bond

18. TERMINATION WITHOUT DEFAULT

- 18.1 If the Council requires the Consultant to cease to provide the Services, the Council may, notwithstanding the provision of Clause 17 (Termination) of these Contract Conditions, at its sole discretion terminate the Agreement by not less than 28 days' notice in writing to that effect.
- 18.2 In the event of such notice being given the Council shall at any time before the expiration of the notice be entitled to exercise such of the following powers as it considers expedient
 - 18.2.1 to direct the Consultant, where any aspect of the performance of the Services has not commenced, to refrain from commencing the performance of that aspect of the Services
 - 18.2.2 to direct the Consultant to complete in accordance with the Agreement all or any aspect of the Services, which shall be paid for on a pro-rata basis in accordance with the Form of Tender and/or the Schedule of Rates. Where any extra services are required to facilitate and hand over back to the Council or to another consultant,

such services shall be paid for on a pro rata basis in accordance with the Schedule of Rates.

- 18.3 If the Agreement is terminated under this Clause the Consultant shall be entitled to receive from the Council any sum or sums due in respect of the Services performed up to the date of termination and the Council shall indemnify the Consultant against any commitments, liabilities or expenditure which have been entered into by the Consultant under the direction of the Council and which are reasonably and properly chargeable by the Consultant to the Council under the terms of the Agreement.

19. GOVERNING LAW

- 19.1 This Contract shall be governed by and construed in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

20. BRIBERY AND CORRUPTION

The Council shall be entitled to cancel the Agreement and to recover from the Consultant the amount of any loss or damage resulting from such cancellation if:

- 20.1 The Consultant shall have offered, or given, or agreed to give to any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to the Agreement or any other agreement with the Council, or
- 20.2 The like acts shall have been done by any person employed by the Consultant or acting on its behalf (whether with or without the knowledge of the Consultant), or
- 20.3 In relation to any agreement with the Council, the Consultant or person employed by it or acting on its behalf shall:
- 20.3.1 have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or
- 20.3.2 have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

21. DISCRIMINATION AND EQUALITY

- 21.1 The Supplier shall ensure that it complies (and shall take all reasonable steps to ensure that all Supplier Personnel comply) with all relevant requirements of all current Equalities legislation, including but not limited to the Equality Act 2010 and all other similar Legislation (“equality legislation”) in force from

time to time together with any guidance or Codes of Practice issued by the Equality and Human Rights Commission (EHRC) and shall in addition discharge its obligation under this agreement and provide the services in a manner consistent with the Council's equalities policies.

22. DATA PROTECTION

22.1 The Parties acknowledge that, in the performance of their obligations under this Contract, they may have access to and process personal data. Each Party shall at all times comply with the requirements of all relevant data protection legislation when collecting, handling and processing personal data under this Contract, including without limitation the Data Protection Act 2018 (as amended) and any subsequent legislation enacted and duly in force from time to time, as well as Regulation (EU) 2016/679 (the General Data Protection Regulation).

23. LIMITATION OF LIABILITY

23.1 Neither Party excludes or limits liability to the other Party for death of or personal injury to any individual.

23.2 Subject always to Clause 23.1, and notwithstanding any other provision contained herein, the total liability of the Supplier (whether under contract, tort or statutory provision) arising out of or in connection with this Agreement shall in no circumstances exceed 125% of the Suppliers fee.

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