



DATED _____ 2018

WARWICKSHIRE COUNTY COUNCIL

and

[INSERT DETAILS OF CONSULTANT]

AGREEMENT FOR THE PROVISION OF
INDEPENDENT COMPLAINTS INVESTIGATION TO THE COUNCIL

WLS

Warwickshire Legal Services

Warwickshire County Council

Shire Hall

Warwick

CV34 4RL

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THIS AGREEMENT is dated

PARTIES

- (1) **WARWICKSHIRE COUNTY COUNCIL** of Shire Hall Warwick CV34 4RR ("**the Council**"); and
- (2) [Name and address] ("**the Consultant**")

NOW IT IS AGREED as follows:

1. **Definitions**

1.1 In this Agreement the following terms shall have the following meanings:

"Business of the Council" Warwickshire County Council provides a wide range of services to over half a million residents. It works with other public, private and voluntary bodies to make Warwickshire a better place for people to live and work. It has specific responsibilities to provide: (i) schools and other educational opportunities; (ii) social care services for young and older people; (iii) libraries, museums and other cultural activities; (iv) the fire and rescue service; (v) the trading standards service; (vi) highways and other public rights of way; and (vii) advice and decisions as the strategic planning authority in relation to mining and waste disposal activities

"Commissioning Officer" means the Council's nominated officer responsible for monitoring the Complaints Investigation undertaken by the Consultant

"Complaints Investigation" means the complaints investigation to be undertaken by the Consultant for the Council in accordance with Schedule 1 or such other complaints investigations as are agreed between the parties thereafter from time to time in writing

"Confidential Information" means 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 Complaints Investigation, the Business, customers, products, affairs and finances of the Council for the time being confidential to the Council and trade secrets including, without limitation, technical data and know-how relating to the Business of the Council or any of its suppliers, customers, agents, distributors, shareholders, management or business contacts,

including (but not limited to) information that the Consultant creates, develops, receives or obtains in connection with the Agreement, whether or not such information (if in anything other than oral form) is marked confidential.

"Council Property" means all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the Business or affairs of the Council or its customers and business contacts or the Complaints Investigation and any equipment, keys, hardware or software provided for the Consultant's use by the Council during the Agreement, and any data or documents (including copies) produced, maintained or stored by the Consultant on the Council or the Consultant's computer systems or other electronic equipment during the Agreement.

“Data Protection Legislation” means the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations, secondary legislation and other Acts of Parliament relating to data protection, as amended or updated from time to time, in the UK;

“Fee” means the fee specified in Schedule 1.

- 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, a reference to one gender shall include a reference to the other genders.
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.6 The Schedules to this agreement forms part of (and is incorporated into) this agreement.

2. **Term of the Agreement**

- 2.1 The Council shall engage the Consultant and the Consultant shall undertake the Complaints Investigation on the terms of this agreement.
- 2.2 This Agreement shall commence on the date hereof and shall continue unless and until terminated
 - a) as provided by the terms of this agreement; or
 - b) by not less than 30 days' prior written notice by either party to the other (“

3. **The Consultant's Obligations**

The Consultant shall:

- 3.1 Undertake the Complaints Investigation to the satisfaction of the Council in a fair, thorough and expedient manner using all reasonable skill and care.
- 3.2 Produce a report of the Complaints Investigation and all other related or supporting documentation as reasonably requested in accordance with the Council's specified format and standards.
- 3.3 Supply all reasonable advice and assistance in any matter relating to the Complaints Investigation
- 3.4 Keep contemporaneous notes of meetings discussions and e-mails and other detailed records of the process followed in undertaking the Complaints Investigation.

- 3.5 Comply with all of the Council's policies and reasonable instructions including, but not limited to, those relating to equal opportunities, health and safety, human rights, data protection and confidentiality.
- 3.6 Attend meetings and comply with any supervision or liaison arrangements if reasonably required by the Council in connection with the Complaints Investigation.
- 3.7 Promptly notify the Commissioning Officer of any concerns regarding timescales for completion of the Complaints Investigation or the need for expert or specialist advice in relation to the Complaints Investigation

4. **Insurance and Liability**

- 4.1 The Consultant shall indemnify and keep indemnified the Council for any loss, liability, cost (including reasonable legal costs) damages or expenses arising from any breach by the Consultant of the terms of this Agreement including any negligent or reckless act, omission or default in the provision of the Complaints Investigation.
- 4.2 The Consultant shall effect and maintain at all times with a reputable insurance company insurance against all loss of and damage to property or injury to person (including death) arising out of or in consequence of the Consultant's obligations under this Agreement and against all claims, demands, costs and expenses in respect thereof.
- 4.3 Such insurance in respect of Clause 4.2 shall be for a minimum of £5,000,000 (five million pounds) in respect of any one act or default for a period of six years after the end of the agreement
- 4.4 The Consultant shall effect and maintain during the period of this Agreement and for a period of six years after the end of the agreement a policy of professional indemnity insurance to cover its liability under this Agreement with a minimum level of indemnity of £2,000,000 (two million pounds) per claim or series of claims.
- 4.5 If so required by the Council the Consultant shall produce a certificate of insurance together with the receipt or receipts for premiums evidencing that the relevant insurance is in force.

5. **Time of the Essence**

Time shall be of the essence in relation to the performance of all obligations contained in this Agreement

6. **Other Activities**

Nothing in this agreement shall prevent the Consultant from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the Agreement provided that such activity does not cause a breach of any of the Consultant's obligations under this agreement;

7. **Status of the Consultant**

- 7.1 The relationship of the Consultant to the Council will be that of independent contractor and nothing in this agreement shall render him an employee, worker, agent or partner of the Council and the Consultant shall not hold himself out as such.
- 7.2 This agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant shall be fully responsible for and shall indemnify the Council for and in respect of:
- (a) any income tax, pension contributions, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Agreement, where the recovery is not prohibited by law. The Consultant shall further indemnify the Council against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Council in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Council'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 Consultant against the Council arising out of or in connection with the Agreement.
- 7.3 The Council may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Consultant.

8. **Fees and Expenses**

- 8.1 In consideration of the provision of the Complaints Investigation provided to the Council by the Consultant the Council shall pay to the Consultant the Fees in accordance with Schedule 1.
- 8.2 The Consultant shall submit an invoice to the Council for approval at the end of each Complaints Investigation showing the number of hours worked and the amount due to the Consultant.
- 8.3 The Council reserves the right to request periodic invoices from the Consultant should the Council so require.
- 8.4 The Council shall pay the Consultant within 30 days of receipt of an agreed invoice.
- 8.5 The Council shall reimburse the Consultant's reasonable travelling expenses in accordance with Schedule 1. Such travelling expenditure shall be supported by receipts, tickets and such other evidence verifying such expenditure as reasonably requested by the Council.
- 8.6 The Council shall be entitled to deduct from the fees (and any other sums) due to the Consultant any sums that the Consultant may owe to the Council.

9. **Intellectual Property**

- 9.1 The ownership of and sole rights to obtain copyright, design rights, patents or registration of or in any document (including documents stored in electronic form) created by the Consultant and supplied exclusively to the Council as part of the

Complaints Investigation shall be vested in the Council from the date of delivery by the Consultant to the Council of the document provided that the Council shall not permit any other person to represent such material as their own work or to incorporate such material in another document without acknowledging its origin.

- 9.2 The ownership of and sole rights to obtain copyright, design rights, patents or registration of or in any document (including documents stored in electronic form) created by the Consultant which are not supplied to the Council in accordance with clause 9.1 shall remain vested in the Consultant at all times.
- 9.3 The Consultant shall fully indemnify the Council against all actions claims demands proceedings damages costs charges and expenses arising from or incurred by reason of any infringement or alleged infringement of copyright, design rights, patents or other intellectual property rights by the use or possession of any material supplied to or used on behalf of the Council by the Consultant as part of the Complaints Investigation.

10. **Confidentiality**

- 10.1 The Consultant acknowledges that in the course of the Agreement he will have access to Confidential Information. The Consultant has therefore agreed to accept the restrictions in this clause10.
- 10.2 The Consultant shall not (except in the proper course of his duties) either during the Agreement or at any time after the termination of this Agreement, use or disclose to any third party (and shall use his best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:
- (a) any use or disclosure authorised by the Council or required by law; or
 - (b) any information which is already in, or comes into, the public domain otherwise than through the Consultant's unauthorised disclosure.
- 10.3 At any stage during the Agreement, the Consultant will promptly on request return all and any Council Property in his possession to the Council.
- 10.4 The Consultant understands that any information in whatever form provided and marked 'protectively marked' by Warwickshire County Council in line with its protective marking policy is binding as such on the Consultant and the Consultant agrees to comply with the requirements of this policy in the handling of the information provided.

11. **Data Protection**

- 11.1 The Consultant and the Council will comply with the Data Protection Legislation and Schedule 2 of this Agreement.

12. **Termination by the Council**

- 12.1 Notwithstanding the provisions of clause 2.2 the Council may by written notice terminate this Agreement or suspend the performance of all or any of its obligations under it with immediate effect and without liability for compensation or damages if:
- 12.2 the Consultant commits a material breach of this Agreement;

- 12.3 the Consultant commits any other breach of this Agreement and fails to remedy such breach (if capable of being remedied) for 14 days after it being called to the Consultant's attention by written notice from the Council;
- 12.4 the Consultant dies, becomes bankrupt or insolvent, has a receiving order made against the Consultant, makes any arrangement with creditors generally or takes or suffers any similar action as a result of debt;
- 12.5 the Consultant is unable to or prevented from carrying out any duties under this agreement through incapacity or any other cause on more than 5 occasions or for any period or periods exceeding a total of 20 days during the Term;
- 12.6 the Consultant is guilty of any act which brings the Council into disrepute or which in the Council's reasonable opinion is prejudicial to its interests; or
- 12.7 if in the Council's absolute discretion it considers the Consultant's work to be incomplete, inadequate or to fall below the standard that the Council would reasonably expect of the Consultant's work.

13. **Termination by the Consultant**

Notwithstanding the provisions of clause 2.2 The Consultant may by written notice terminate this Agreement or suspend the performance of all or any of its obligations under it with immediate effect if the Council commits a material breach of its obligations under this Agreement and fails to remedy the breach (if capable of being remedied) for 28 days after it being called to the Council's attention by written notice from the Consultant.

14. **Obligations on Termination**

On the termination of this Agreement the Consultant shall:

- a) immediately deliver to the Council all Council Property in his possession or under his control;
- b) irretrievably delete any information relating to the Business of the Council stored on any magnetic or optical disk or memory and all matter derived from such sources which is in his possession or under his control outside the premises of the Council; and
- c) provide a signed statement that he has complied fully with his obligations under, this clause 14.

15. **Publicity**

- 15.1 The Consultant shall not in any way advertise or publicly announce that the Consultant is engaged or approved by the Council without the previous written consent of the Council.

- 15.2 The Consultant shall not at any time after the termination of this Agreement make any representation to any person that the Consultant is interested or employed by or in any way connected with the Council or its business.

16. **Anti-Corruption**

Notwithstanding the provision of clauses 2.2 and 12 the Council shall be entitled to terminate this Agreement with immediate effect with no liability to make further payments to the Consultant and may recover from the Consultant the amount of any loss resulting from such termination if at any time it shall become known to the Council that the Consultant:

- 16.1 has offered or given or agreed to give any inducement or reward to any person or company in relation to the obtaining or execution of this Agreement or any other contract or agreement with the Council; or
- 16.2 has shown favour or disfavour to any person in relation to this Agreement or any other contract or agreement with the Council; or
- 16.3 if any of the acts contained in sub-clause (i) and (ii) of this clause shall have been done by any person employed by the Consultant or on its behalf (whether with or without the knowledge of the Consultant); or
- 16.4 if in relation to any contract or agreement with the Council the Consultant or any person employed by it or acting on its behalf shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under sub-section (3) of section 117 of the Local Government Act 1972.

17. **Non-Discrimination and Modern Slavery**

- 17.1 The Consultant shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation to discrimination (whether race, gender, religion, disability, sexual orientation or otherwise) including but not limited to the Equality Act 2010.
- 17.2 The Consultant shall take all reasonable steps to secure the observance of clause 17.1 by all servants employees or agents of the Consultant and all suppliers and sub-contractors employed in the provision of the Complaints Investigation.
- 17.3 The Consultant shall comply with the Modern Slavery Act 2015 and where applicable implement a due diligence procedure for its own suppliers, subcontractors and other participants in its supply chain to ensure that there is no slavery or human trafficking in its supply chain.

18. **Freedom of Information**

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 and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

19. **No Waiver**

Either party may release or compromise the liability of the other under this Agreement or any agreement mentioned in it or grant to the other time or other indulgence without affecting the other's liability.

20. **Entire Agreement**

This agreement together with any documents referred to in it constitutes the entire agreement and understanding of the parties in respect of the matters contained or referred to in it and there are no promises, terms, conditions or obligations oral or written, express or implied other than those contained in this Agreement.

21. **Variation**

No variation or amendment of this Agreement or oral promise or commitment related to it shall be valid unless committed to writing and signed by or on behalf of both parties.

22. **Governing Law and Jurisdiction**

22.1 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 English law.

22.2 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 agreement or its subject matter or formation (including non-contractual disputes or claims).

23. **Notices**

23.1 Any notice given under this Agreement shall be in writing and may be served personally; by registered or recorded delivery mail; by telex or facsimile transmission; or by any other means which any party specifies by notice to the other.

23.2 Each party's address for the service of notice shall be the address set out above or such other address as is specified by notice to the other.

23.3 A notice shall be deemed to have been served:

23.3.1 if it was served in person, at the time of service;

23.3.2 if it was served by post, 48 hours after it was posted; and

23.3.3 if it was served by telex or facsimile transmission, at the time of transmission.

24. **Third Party Rights**

A person who is not a party to this agreement shall not have any rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This Contract does not create any right enforceable by any person not a party to it under the Contracts (Rights of Third Parties) Act 1999.

25. **Right to Set-Off**

The Council reserves the right set-off against its indebtedness to the Consultant any debt owed to it by the Consultant and any liability damage loss costs charges and expenses which it has incurred in consequence of any breach by the Consultant of this Agreement or any other contract or agreement made between the parties.

26. **Assignment**

Neither party shall assign or transfer the whole or any part of this Agreement and the Consultant shall not without the prior approval of the Council sub-contract the supply of the Complaints Investigation.

27. **Force Majeure**

Neither party shall be liable for failure to perform its obligations under the Agreement if such failure results from national war emergency regulation or any other circumstances beyond the party's reasonable control (with the specific exception of industrial action) and in such event the Agreement shall terminate unless the parties otherwise agree and all monies due shall be paid immediately.

IN WITNESS WHEREOF the Council and the Consultant have executed this Contract by hand the day and year first before written.

SIGNED ON BEHALF OF THE CONSULTANT

Name

Authorised Signatory

SIGNED ON BEHALF OF THE COUNCIL

Name.....

Authorised Officer

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SCHEDULE 1

Complaint Investigation Brief

(this should include details of fees, mileage rates, details and objectives of the investigation, investigation timetable; reporting structures, any info about standards of investigation or reports that you want to attach; any other info that you would like to be able to enforce as a contractual obligation in the event that you had a dispute later on

[The parties hereby agree that the Consultant's fees shall not exceed £1,000]

[The Consultant undertakes to notify the Council in writing within 3 working days of the Consultant's fees exceeding £500]

Hourly rate	£
Mileage rate	p per mile
Brief	
Key objectives	
Timetable/deadline	
Payment period	

SCHEDULE 2

GDPR

DEFINITIONS

Data Protection Legislation: the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, and other Acts of Parliament relating to data protection, as amended or updated from time to time, in the UK.

1. DATA PROTECTION

- 1.1 Both parties will comply with all applicable requirements of the Data Protection Legislation.
- 1.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the data controller and the Consultant is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation). Schedule 2 sets out the scope, nature and purpose of processing by the Consultant the duration of the processing and the types of personal data (**Personal Data**, as defined in the Data Protection Legislation) and categories of data subject (**Data Subject**, as defined in the Data Protection Legislation).
- 1.3 Without prejudice to the generality of paragraph 1.1, the Consultant shall in relation to any Personal Data processed in connection with the performance by the Consultant of its obligations under this Agreement:
- (a) process that Personal Data only on the written instructions of the Council unless the Consultant is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Consultant to process Personal Data (**Applicable Laws**). Where the Consultant is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Consultant shall promptly notify the Council of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Consultant from so notifying the Council ;
 - (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any

measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);

- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Consultant has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Consultant complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (e) assist the Council in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Council without undue delay on becoming aware of a Personal Data breach;
- (g) at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this paragraph 1.4 and allow for audits by the Council or the Council's designated auditor.

1.4 The Council does not consent to the Consultant appointing any third party processor of Personal Data under this Agreement.

1.5 The Consultant shall indemnify the Council for any costs, losses or expenses that it incurs as a result of the Consultant failing to comply with the Data Protection Legislation or otherwise breaching this Schedule 2 (including, without limitation to the foregoing, in any situation where a court or tribunal of competent jurisdiction holds

the Consultant and/or the Council jointly and severally liable in respect of any claim where the Consultant was the Data Processor (either solely or jointly)).

Schedule 2 (A) - Processing, Personal Data and Data Subjects

Description	Details
Subject matter of the processing	The Complaint Investigation at Schedule 1 may include Personal Data.
Duration of the processing	The Processing shall begin on the date of this agreement and shall end on the termination of this agreement
Nature and Purposes of the Processing	The purpose of the processing is in connection with the Consultant's performance of the Complaints Investigation Brief.
Types of Personal Data	Name, gender, date of birth, address, telephone number, email address, name of employer, job title, social work case notes, national insurance number, referrals records or reports from third party organisations.
Categories of Subject Data	Members of the public, customers/clients, Staff (including volunteers, agents, and temporary workers, students or pupils).
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	The Consultant shall delete or return any Personal Data (including copies) to the Council that it has in its possession through carrying out its obligations under the Agreement in accordance with the terms of the Agreement unless required to retain the Personal Data by law.