

**CONSULTANCY AGREEMENT
FOR
CONNECT PUBLIC AFFAIRS LTD.**

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and expressions shall have the following meanings save where the context provides or requires otherwise:

“Commencement Date”

means the commencement date in Appendix 1.

“Commission”

means the Audit Commission for Local Authorities and the National Health Service in England of 1st Floor, Millbank Tower, Millbank, London. SW1P 4HQ.

“Commission Representative”

means the person responsible for all matters connected to the Agreement on behalf of the Commission and who is named as Commission Representative in Appendix 2.

“Confidential Information”

means any information which has been designated as confidential by either the Commission or the Consultancy in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including but not limited to information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and contractors of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and any information specifically designated by the Commission to be commercially sensitive information.

“Consultancy”

means the body or person whose full name, registered office or principal place of business is set out in Appendix 5.

“Fee”

means the fee set out in Appendix 3.

“Intellectual Property Rights”

means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any

country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Key Personnel”

means the individual(s) listed as such in Appendix 2.

“Services”

the services described in the Schedule of Work set out at Appendix 1.

“Termination Date”

the termination date set out in Schedule 1 or the date this agreement terminates whenever arising for whatever reason, whichever is the earlier.

1.2 In this Agreement:

1.2.1 words expressed in any gender shall where the context requires include any other gender;

1.2.2 words expressed in the singular shall where the context requires include the plural and vice versa;

1.2.3 references to a party shall where the context permits include permitted successors.

2. APPOINTMENT OF CONSULTANCY

2.1 The Commission hereby appoints the Consultancy to provide the Services and the Consultancy hereby accepts such appointment upon the terms and conditions contained in this Agreement.

2.2 Subject to the terms of this Agreement, such appointment will take effect from the Commencement Date and continue until the Termination Date unless extended by agreement between the parties.

3. ASSIGNMENT AND SUB-CONTRACTING

3.1 The Consultancy shall not assign or sub-contract the whole or any part of the Agreement without the prior written consent of the Commission.

4. CONSULTANCY'S OBLIGATIONS

4.1 The Consultancy shall provide the Services through its Key Personnel within the timescales set by the Commission, and must obtain the approval of the Commission prior to substituting any Key Personnel, such approval not to be unreasonably withheld.

4.2 In the performance of the Services, the Consultancy shall exercise all the skill, care and diligence to be expected of a properly qualified and competent consultant experienced in carrying out services of a similar scope, nature and size to the Services.

4.3 In the performance of its obligations under this Agreement, the Consultancy shall comply in all respects with all statutes, regulations and codes of practice

pertaining to its profession and shall ensure that all its officers, employees and agents engaged in the provision of the Services shall also comply in all respects.

- 4.4 The Consultancy shall, in performing the Services comply with the Commission's relevant rules, codes, policies, procedures and standards notified from time to time during the term of the Agreement by the Commission to the Consultancy, including in particular the Commission's financial regulations and standing orders and the Commission's ICT Code of Conduct where any members of the Consultancy use the Commission's ICT equipment during the period of this appointment;
- 4.5 The Consultancy shall
- a) inform the Commission promptly of any practical difficulties in meeting the Commission's stated objectives and propose a solution; and
 - b) do its utmost to promote the interests of the Commission and where appropriate maintain goodwill with the public and third parties; and
 - c) assist the Commission in securing continuous improvements having regard to economy, effectiveness and efficiency; and
 - d) provide the Commission with sufficient information to permit it to satisfy its statutory obligations in all matters relating to the Services or this Agreement; and
 - e) regularly review the arrangements for providing the Services.
- 4.6 At all times, the Consultancy shall carry out its obligations to the entire satisfaction of the Commission and follow all reasonable directions of the Commission.

5. FEES AND EXPENSES

- 5.1 The Consultancy shall at the end of each month invoice the Commission for the fee owing for that month:
- a) which will be calculated on the basis of the time spent providing the Services multiplied by the Fee where the Fee consists of an hourly or daily rate; or
 - b) which will be a pro-rata portion of the Fee reflecting the time spent providing the Services in that month compared with the total amount of time that will be spent providing the Services under the Agreement where the Fee is fixed;
- by sending an invoice to Accounts Payable at the address indicated on the Purchase Order. Invoices must stipulate the purchase order number, time spent, services provided and the relevant dates and, subject to the terms of this Agreement, the Commission shall pay the fee within 30 days of receipt of such invoice.
- 5.2 Subject to Clause 5.3 the Commission shall reimburse the Consultancy with all reasonable travelling and other out-of-pocket expenses which the Consultancy may from time to time reasonably and properly incur in connection with the provision of the Services in accordance with Appendix 3. Such expenses shall be paid by the Commission within 30 days of receipt of an appropriate invoice.

- 5.3 The Consultancy must submit invoices in respect of expenses (accompanied by the relevant receipts and vouchers) to the Commission as soon as practicable following the last working day of the month in which such expenses were incurred and no later than 3 months from the date incurred.
- 5.4 Where the Consultancy enters into a sub-contract with a supplier or consultant for the purpose of performing the Agreement, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Consultancy to the supplier or consultant within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

6. STATUS

- 6.1 The relationship of the Consultancy to the Commission will be that of independent consultant and nothing in this Agreement shall be construed as rendering the Consultancy as an employee, agent or partner of the Commission nor create a joint venture and the Consultancy shall not hold itself out as such.
- 6.2 The Consultancy may represent himself as a Consultant to the Commission when providing services under this Agreement but the Commission shall not be vicariously liable for any acts or omissions of the Consultancy nor shall the Consultancy be entitled to pledge the credit of the Commission nor sign any documents, enter into any contract or agreement or make any promises on behalf of the Commission (without the Commission's prior written consent at the Commission's sole discretion).
- 6.3 The Consultancy shall have the status of a self employed person and shall be exclusively responsible for the payment of national insurance, income tax and VAT payable in respect of any payments made pursuant to this Agreement.

7. CONSULTANCY'S DISCRETION AS TO THE MODE OF DELIVERY OF THE SERVICES

- 7.1 Save as provided by this Agreement the Commission shall not seek to exercise any supervision or control over the Consultancy in the manner of the performance of the Services.

8. OTHER BUSINESS

- 8.1 The Consultancy may supply Services or act as Consultant to other parties and businesses during the term of this Agreement, provided that there is no likely conflict of interest and doing so does not compromise or restrict the Consultancy's ability to deliver the Services satisfactorily under this Agreement.

9. ABORTIVE OR INCOMPLETE WORK

- 9.1 If the Commission withdraws instructions before the Consultancy has acted upon those instructions, no fee shall be payable.

- 9.2 Where work is incomplete at the expiry or termination of the Agreement, the Commission shall have sole discretion, not to be exercised unreasonably, as to whether:
- a) no payment is due; or
 - b) payment is due on a quantum meruit basis, in which case the sum shall be quantified by the Commission and its quantification shall be final; or
 - c) the Consultancy shall be offered the opportunity to complete the Services and if the Consultancy agrees to do so, the work shall be valued at the appropriate rate on completion and payment made in accordance with the procedure set out in Clause 5.

10. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

- 10.1 In the event that the Consultancy has failed to perform any of its duties under the Agreement or in so doing has failed to meet the requirements of Clause 4, then the Commission may, without prejudice to its rights under the terms of this Agreement, do any of the following:
- (a) make such deduction from the payment to be made to the Consultancy as the Commission shall reasonably determine as being equivalent to the value of the part of the Service as the Consultancy shall have failed to provide or to provide adequately which would otherwise have been payable in respect of the Services;
 - (b) without terminating the Agreement, itself provide or procure the provision of part of the Services until such time as the Consultancy shall have demonstrated to the reasonable satisfaction of the Commission that the Consultancy will once more be able to perform such part of the Services in accordance with the Agreement;
 - (c) without terminating the whole of the Agreement, terminate the Agreement in respect of part of the Services only (whereupon a corresponding reduction in the fee shall be made) and thereafter itself provide or procure a third party to provide such part of the Services;
 - (d) where the failure is a failure to perform any of the Services to the satisfaction of the Commission, then the Commission may instruct the Consultancy to perform the work to the satisfaction of the Commission and the Consultancy shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 14 days or such other period of time as the Commission may direct.
- 10.2 The Commission may charge to the Consultancy any cost reasonably incurred by the Commission and any reasonable administration costs in respect of the provision of any part of the Services by the Commission or by a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Consultancy for such part of the Services.
- 10.3 The remedies of the Commission under this Clause may be exercised successively in respect of any one or more failures by the Consultancy.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 The Consultancy agrees and acknowledges that title and all Intellectual Property Rights in all works including correspondence, reports, documents, computer programs and any other works created in the performance of the Services and in any inventions made during the course of this Agreement (including any discovery or improvement) or indirectly as a result of the performance of the Services shall at all times be the absolute property of the Commission. The Consultancy further agrees that it shall at the request and expense of the Commission execute any necessary documents and do anything necessary to perfect or secure the Commission's rights and title.
- 11.2 The Consultancy hereby unconditionally and irrevocably waives all rights arising under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 in respect of all copyright works created in the course of providing the Services. This waiver shall operate equally in favour of the Commission, its licensees and successors in title.

12. COPYRIGHT INDEMNITY

- 12.1 The Consultancy shall indemnify and keep indemnified the Commission against any third party claims alleging infringement of copyright patents trade marks industrial designs or other intellectual property rights in the United Kingdom in connection with the work carried out by the Consultancy in the provision of the Services.
- 12.2 The Consultancy shall at its own expense be responsible for the conduct of the defence of any such claim.

13. CONFIDENTIALITY

- 13.1 Subject to Sub-Clauses 13.2 and 13.3 the Consultancy shall take reasonable precautions to ensure that neither it nor any of its officers or employees:
- a) discloses or uses any Confidential Information which is acquired in connection with this Agreement, except as is reasonably necessary for the performance of its obligations under this Agreement or as the Commission agrees; and
 - b) uses any Confidential Information it receives from the Commission other than for the purposes of the delivery of the Services.
- 13.2 The Consultancy or the Commission may disclose Confidential Information for a proper purpose:
- a) to a public authority (which for the purposes of this Agreement means any governmental, regulatory or other public authority in the UK or elsewhere including a person appointed by a public authority to carry out an investigation); or
 - b) to a Court of Law in the UK or elsewhere in any legal proceeding; or
 - c) in connection with the Freedom of Information Act 2000.
- 13.3 Clause 12.1 shall not apply to any Confidential Information received by the Consultancy from the Commission:

- a) which is or becomes public knowledge (otherwise than by breach of this Clause);
- b) which was in the possession of the Consultancy, without restriction as to its disclosure, before receiving it from the Commission;
- c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- d) which is independently developed without access to the Confidential Information; or
- e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Consultancy.

13.4 Nothing in this Clause shall prevent the Commission from:

- a) disclosing any information designated by the Consultancy to be Confidential Information where the disclosure is for the purpose of:
 - i) the examination and certification of the Commission's accounts; or
 - ii) any examination pursuant to the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Commission has used its resources; or
- b) disclosing any Confidential Information obtained from the Consultancy:
 - i) to any other public authority; or
 - ii) to any person engaged in providing any Services to the Commission for any purpose relating to or ancillary to the Agreement;
 provided that in disclosing information under sub-paragraph (b) the Commission discloses only the information that is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

13.5 Nothing in this Clause shall prevent either the Commission or the Consultancy from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

13.6 During the term of this Agreement and at any time thereafter, the Consultancy shall not without the prior written approval of the Commission Representative make any statement (whether written or oral) to or provide any material for publication by television, radio, film or other similar media regarding any matter on or relating to the work or affairs of the Commission which came to its knowledge in the performance of the Services.

13.7 In the event that the Consultancy fails to comply with this Clause, the Commission reserves the right to terminate the Agreement by notice in writing with immediate effect.

13.8 In addition to its obligations under Clause 12, the Consultancy shall comply with section 49 of the Audit Commission Act 1998.

14 FREEDOM OF INFORMATION

14.4.1 The Contractor acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and

cooperate with the Client to enable the Client to comply with its Information disclosure obligations.

14.4.2 The Contractor shall and shall procure that its Sub-contractors shall:

14.4.2.1 transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

14.4.2.2 provide the Client with a copy of all Information in its possession, or power in the form that the Client requires within five Working Days (or such other period as the Client may specify) of the Client's request; and

14.4.2.3 provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA[or regulation 5 of the Environmental Information Regulations].

14.4.3 The Client shall be responsible for determining in its absolute discretion whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

14.4.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Client.

14.4.5 The Contractor acknowledges that (notwithstanding the provisions of Clause 14.4) the Client may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code") being obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Contractor or Services:

14.4.5.1 In certain circumstances without consulting with the Contractor; or
14.4.5.2 following consultation with the Contractor and having taken their views into account;

provided always that where 14.4.5.1 applies the Client shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

14.4.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Client to inspect such records as requested from time to time.

14.4.7 The Contractor acknowledges that any Commercially Sensitive Information is of indicative value only and that the Client may be obliged to disclose it in accordance with clause 14.4.5.

15. PROTECTION OF PERSONAL DATA

- 151.1 With respect to the parties' rights and obligations under this Agreement, the parties agree that the Client is the Data Controller and that the Contractor is the Data Processor.
- 151.1.2 The Contractor shall:
- 151.2.1 Process the Personal Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Client to the Contractor during the Term);
 - 151.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
 - 151.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 151.2.4 take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
 - 151.2.5 obtain prior written consent from the Client in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services;
 - 151.2.6 ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 15;
 - 151.2.7 ensure that none of Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Client;
 - 151.2.8 notify the Client (within [five] Working Days) if it receives:
 - 151.2.8.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 151.2.8.2 a complaint or request relating to the Client's obligations under the Data Protection Legislation;
 - 151.2.9 provide the Client with full cooperation and assistance in relation to any complaint or request made, including by:
 - 151.2.9.1 providing the Client with full details of the complaint or request;
 - 151.2.9.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Client's instructions;

151.2.9.3 providing the Client with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Client);
and

151.2.9.4 providing the Client with any information requested by the Client;

151.2.10 permit the Client or the Client Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Client to enable the Client to verify and/or procure that the Contractor is in full compliance with its obligations under this Agreement;

151.2.11 provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Client); and

151.2.12 not Process Personal Data outside the European Economic Area without the prior written consent of the Client and, where the Client consents to a transfer, to comply with:

151.2.12.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and

151.2.12.2 any reasonable instructions notified to it by the Client.

15.1.3 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Client to breach any of its applicable obligations under the Data Protection Legislation.

16. HEALTH AND SAFETY

16.1 In the provision of the Services, the Consultancy shall comply at all times with the requirements of all Health and Safety at Work legislation and regulations in order to protect the health and safety of its own officers and employees, and to the extent that it is applicable, the employees of the Commission and the public.

17. NO DISCRIMINATION

17.1 The Consultancy shall not unlawfully discriminate either directly or indirectly or by way of victimisation or harassment against any person on such grounds as race, colour, ethnic or national origin, disability, gender, transgender, sexual orientation, religion, belief or age.

- 17.2 The Consultancy shall use its best endeavours to follow all guidance issued by the Equality and Human Rights Commission and any successor body.
- 17.3 The Consultancy shall take all reasonable steps to secure the observance of this Clause by all servants, employees or agents of the Consultancy and all contractors and subcontractors deployed by the Consultancy in the performance of the Agreement.
- 17.4 The Consultancy acknowledges and accepts that the Commission has a general legal duty to promote equality and remove discrimination and specifically a duty to promote equal opportunities relating to race, disability and gender. In its performance of the Agreement, the Consultancy shall keep in mind the importance of equality and diversity to the Commission's work and shall endeavor to assist the Commission in meeting its aims.
- 17.5 Where in connection with this Agreement the Consultancy, its agents or subcontractors, or its staff are required to carry out work on the Commission's premises or alongside the Commission's employees on any other premises, the Consultancy shall comply with the Commission's own employment policy and codes of practice relating to equalities and diversity.
- 17.6 The Consultancy shall notify the Commission immediately in writing as soon as it becomes aware of any investigation of the Consultancy and/or proceedings to be brought against the Consultancy under any of the equalities legislation or any other investigation or proceedings relating to equalities and diversities issues arising from an allegation against the Consultancy or any of its subcontractors or agents connected to this Agreement.
- 17.7 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter related to allegations that the Consultancy's performance of this Agreement is in contravention of the equalities legislation, then the Consultancy shall:
- a) provide any information requested by the Commission in the timescale allotted; and
 - b) attend any meetings as required by the Commission and ensure that any relevant staff, subcontractors and/or agents also attend; and
 - c) promptly allow the Commission access to and investigation of any documents or data deemed to be relevant; and
 - d) allow itself and any relevant staff, subcontractors and/or agents to appear as witnesses in any ensuing proceedings; and
 - e) co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 17.8 Where any investigation is conducted or proceedings are brought under the equalities legislation which arise directly or indirectly out of any act or omission of the Consultancy, its staff, agents and/or subcontractors, and where there is a finding against the Consultancy in such investigation or proceedings, the Consultancy shall indemnify the Commission with respect to all costs, charges and expenses (including but not limited to legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any

payment the Commission may have been ordered or required to pay to a third party in connection with such proceedings or investigation.

- 17.9 In the event that the Consultancy enters into any subcontract in connection with this Agreement, the Consultancy shall impose equalities and diversities obligations on its subcontractors in terms substantially similar to those contained in this Agreement.

18. CONFLICT OF INTEREST

- 18.1 The Consultancy warrants that, to its knowledge, at the time of entering into this agreement there is no actual, possible or potential conflict.

- 18.2 Where the Consultancy becomes aware of any actual, possible or potential conflict of interest between the Commission and the interests of a third party which the Consultancy is advising or providing services to:

- a) the Consultancy shall immediately inform the Commission, in writing, of this conflict; and
- b) the Consultancy shall cease to advise or provide services to the third party unless the Commission agrees in writing that the Consultancy may continue to do so; and
- c) where the Commission attaches conditions to any agreement under Sub-Clause 16.1(b), the Consultancy shall comply with those conditions in their entirety, failing which the Commission may terminate this Agreement in which case the Consultancy acknowledges and accepts that the Commission may be entitled to damages; and
- d) the Consultancy shall continue to provide services to the Commission and shall not attempt to discontinue all or any part of the Services out of a preference to retain the third party as client, failing which the Commission may terminate this Agreement, in which case the Consultancy acknowledges and accepts that the Commission may be entitled to damages.

- 18.3. If the Commission so elects and at its sole discretion, the Consultancy may be required to cease providing any part of the Services affected by a conflict of interest and the Consultancy acknowledges and accepts that in such case it will have no claim for damages.

- 18.4 Where the provision of the Services has commenced but a conflict of interest has arisen and work has subsequently ceased, it shall be a matter for the Commission's sole discretion as to whether or not any payment is due to the Consultancy, such discretion not to be exercised unreasonably.

19. COMPLAINTS AND CORRESPONDENCE

- 19.1 The Consultancy shall deal promptly with any suggestions, comments or complaints within the scope of the Services, and shall provide any information or assurances as may be required. Where such matters fall outside the scope of the Services the Consultancy shall forward to the Commission Representative within three (3) working days the correspondence received or details of any suggestion or complaint.

- 19.2 The Consultancy shall provide promptly to the Commission copies of all complaints and correspondence arising in relation to the performance by the

Consultancy of the Services and such reasonable statistical information as the Commission may from time to time require.

- 19.3 The Commission may request information or documents from the Consultancy in connection with suggestions, comments or complaints. The Consultancy shall provide all such information and documents as quickly as possible and in any event no later than ten (10) working days following the request being made, or such earlier time as the Commission may reasonably require.
- 19.4 Where reasonably required, the Consultancy shall co-operate with the Commission's Independent Complaints Reviewer.

20. LIABILITY AND INDEMNITY OF THE CONSULTANCY

- 20.1 The Consultancy shall:
- 20.1.1 maintain at its own cost and expense an adequate policy or policies of insurance with an insurer of repute in the United Kingdom to cover the liability of the Consultancy in respect of any act, neglect or default in the provision of the Services and shall, upon request, provide the Commission with written evidence to the Commission's satisfaction that it holds such policy of insurance which is valid and in force; and
 - 20.2 indemnify the Commission and keep indemnified against any claims, costs, expenses, losses, damages or other liabilities arising from the Consultancy's performance or breach of the Consultancy's obligations under this Agreement including but not limited to:
 - 20.2.1 any income tax (excluding VAT), National Insurance and Social Security contributions and any interests, penalties and other liability, deduction, contribution, assessment or equivalent claim (excluding VAT) which may be accountable to HM Revenue and Customs along with the disallowance of any VAT charged in respect of the services as allowable input tax for the company
 - 20.2.2 any unauthorised act or omission of or any negligence, wilful default or breach of duty by the Consultancy.
 - 20.3 The Commission may at its option satisfy such indemnity (in whole or in part) by way of deduction from the fees or expenses to be paid by the Commission under this Agreement.

21. EVIDENCE IN CONNECTION WITH LEGAL PROCEEDINGS

- 21.1 If requested to do so by the Commission, the Consultancy shall provide any information that the Commission reasonably deems to be relevant to any legal inquiry, court proceedings, tribunal or any proceedings internal to the Commission arising from or in any way connected to this Agreement.
- 21.2 For the purposes of this Clause, "information" includes but is not limited to statements, documents, minutes of meetings and memoranda including documents headed "confidential".

21.3 Such information shall be provided within two (2) working days after the day that the request is made by the Commission.

21.4 Where reasonably required by the Commission, the Consultancy shall attend any external tribunal or court hearing.

22. ACCESS TO PREMISES AND INFORMATION

22.1 The Consultancy shall provide the Commission with all reasonable management information requested so as to enable the Commission to manage the Services under the Agreement and monitor improvements.

22.2 The Consultancy shall at all times during the term of the Agreement allow the Commission and such persons as may be nominated by the Commission reasonable access if required to all offices and workplaces of the Consultancy for the purpose of monitoring and inspecting work being performed to carry out the Services.

22.3 The Consultancy shall at all times during the term of the Agreement and for a period of six (6) years afterwards:

- a) keep secure and give to or make available for inspection by the Commission, all original and copy records, documents, information, statements and papers which may be acquired or produced by the Consultancy or by any permitted sub-contractor in the performance of the Services. In default of compliance, the Commission may recover possession of such materials and the Consultancy licences the Commission or its appointed agents to enter for those purposes any premises of the Consultancy or its permitted subcontractors where any such materials may be held; and
- b) make such explanations to the Commission as may be necessary for them to be satisfied that the terms and conditions of the Agreement have been complied with by the Consultancy in the course of providing the Services.

22.4 The Consultancy shall co-operate with the Commission in dealing with any Freedom of Information Act 2000 requests that the Commission reasonably considers to be connected with the Consultancy's Services. The Consultancy shall do its utmost in connection with such matters to respond in a timely manner so as to ensure that the Commission can meet its legal response times.

23. CORPORATE LOGO AND IDENTITY

23.1 The Consultancy shall not make use of the Commission's name, corporate logo or corporate identity in any advertisement, logo, or similar without the Commission's express prior written consent.

23.2 The Consultancy accepts that since damages are unlikely to be an adequate remedy for breach of this Clause, the Commission is entitled to apply for an injunction to prevent a breach or continuing breach, or an order for specific performance where this is deemed by the Commission to be a more adequate remedy.

24. GIFTS AND GRATUITIES

- 24.1 All gifts and hospitality of any nature whether or not financial offered to or received by the Consultancy that might be deemed to be or potentially deemed to be in connection with this Agreement shall immediately be reported in writing to the Commission.
- 24.2 Where the Commission is of the view that such gift or hospitality is inappropriate, excessive or may raise reasonable doubts as to the Consultancy's neutrality, irrespective of whether such doubts would be justified, then the gift must be returned or the cost of the hospitality refunded.

25. TERMINATION

- 25.1 Notwithstanding any other provision within this Agreement, the Agreement may be terminated in accordance with this Clause.
- 25.2 The Commission may terminate the Agreement with immediate effect in any of the following circumstances:
- a) the Consultancy offered, gave or agreed to give to any person any inducement or reward of any kind in order to obtain entry into this Agreement or any other contract with the Commission; or
 - b) the Consultancy's personnel or agents did any of the acts set out in Sub-Clause 25.2(a) above whether the Consultancy knew about it or not; or
 - c) the Consultancy or anyone employed by it or anyone acting on behalf of the Consultancy committed an offence under the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Acts 1906-1916 or the Corrupt Practices Act 1909 or s117 Local Government Act 1972; or
 - d) any information provided by the Consultancy during any tender process or during any presentation made to the Commission in connection with the entering into of this Agreement or any other contract with the Commission proves to be materially untrue or incorrect; or
 - e) where the Consultancy is or has been a member of a cartel or similar arrangement, whether or not in connection with this Agreement.
- 25.3 The Consultancy acknowledges and accepts that where any of the circumstances in Sub-Clause 25.2 apply, then without prejudice to its other remedies the Commission shall be entitled to any costs resulting from such breach and where the Consultancy was a member of a price-fixing cartel shall be entitled to the difference between the tender price and uncorrupted market price of any affected contract as part of its claim for damages.
- 25.4 If either Party commits a material breach of any of its obligations or is persistently in breach of its obligations under this Agreement and fails to remedy it, if capable of remedy, within thirty days of receipt of notice specifying the breach and requiring remedy ('Notice to Remedy'), then the other Party may terminate the Agreement by giving the Party in breach thirty days' notice in writing.
- 25.5 At its sole discretion the Commission may terminate the Agreement with immediate effect if the Consultancy:
- a) becomes bankrupt or makes a composition or arrangement with its creditors or has a proposal in respect of its company for voluntary

arrangement of debts or scheme or arrangement approved in accordance with the Insolvency Acts; or

- b) has an application made to the Court for the appointment of an administrative receiver; or
- c) has a provisional liquidator, receiver, manager of its business or undertaking duly appointed under the Insolvency Acts; or
- d) has a winding up order made or resolution for voluntary winding up passed; or
- e) has possession taken by or on behalf of any holders of debentures secured by a floating charge or any property comprising or subject to the floating charge; or
- f) is in circumstances which entitle the Court or creditor to appoint or have appointed a receiver or which entitle the court to make a winding up order; or
- g) has any director or partner become insolvent or bankrupt or disqualified as a director; or
- h) any director or partner convicted of any offence of fraud or dishonesty whether in connection with an event before or after the Commencement date; or
- i) has any partner or director disqualified from her/his professional body.

25.6 At its sole discretion the Commission may terminate the Agreement by giving the Consultancy thirty days' notice in writing where:

- a) there is a change of control in the Consultancy's company or parent company within the definition of s416 of the Income and Corporation Taxes Act 1988, other than for a bona fide reconstruction or amalgamation which in the opinion of the Commission does not have an adverse effect on the financial standing of the Consultancy or the parent company; or
- b) the Consultancy is a partnership, and changes or dissolves its partnership other than by the addition of new partners or the retirement of existing partners so long as at least 75% of the equity partners remain.

25.7 At its sole discretion but not vexatiously or unreasonably the Commission may terminate the Agreement by giving the Consultancy thirty days' notice in writing if the Consultancy:

- a) fails to provide the Services satisfactorily; or
- b) is in material breach of any of the conditions of this Agreement; or
- c) makes such changes to its Key Personnel that the Commission is no longer satisfied that the Consultancy is able to provide satisfactory Services; or
- d) brings the Commission into disrepute or does anything which the Commission reasonably considers may bring the Commission into disrepute by association; or
- e) commits any act or behaves in any manner such that it is reasonable to conclude that public trust and confidence in the Consultancy have seriously diminished or expired as a result; or
- f) takes any steps that in the reasonable view of the Commission will preclude the Consultancy from delivering the Services to the standard legitimately anticipated at the time the Agreement was entered into; or
- g) has an act of gross misconduct committed by any of its Key Personnel; or
- h) has an act of gross misconduct committed by any of its employees who are based on Commission premises.

- 25.8 If, due to a series of events or set of circumstances, it becomes the Commission's reasonable view that it is impossible to maintain confidence in the Consultancy's ability to perform the Services to a satisfactory standard, then entirely at its sole discretion but not vexatiously or unreasonably the Commission may terminate the Agreement by thirty days' notice in writing.
- 25.9. If the Commission ceases to require all or any part of the Services, then entirely at its sole discretion the Commission may terminate the Agreement by three (3) months' notice, such discretion not to be exercised vexatiously or unreasonably.
- 25.10 Notice of termination by either party shall be served in writing in accordance with Clause 29.
- 25.11 Where this Agreement is terminated:
- a) the Commission and the Consultancy shall be relieved from further performance of their obligations; and
 - b) any rights and remedies to which either party becomes entitled or subject before the termination shall remain effective; and
 - c) the termination shall not affect any right to damages that the party serving notice of termination may have in respect of the default giving rise to the termination or any other right to damages which either party may have in respect of any breach occurring before the termination; and
 - d) notwithstanding the termination of the Agreement, the Clauses pertaining to the following matters shall remain in effect: confidentiality, copyright; data protection; documents, records and management information; evidence in connection with legal proceedings; applicable law; liability; indemnity and insurance; notices; set-off; all Clauses with regard to co-operation at expiry or termination of the Agreement.
- 25.13 At the expiry or termination of this Agreement, the Consultancy shall co-operate with any incoming Consultancy(s), third party agencies, and with the Commission and do its utmost to ensure a smooth transition of the Services. Without prejudice to the generality of the foregoing, this includes but is not limited to providing the Commission with the appropriate data and records and full financial information.
- 25.14 If so requested by the Commission, the Consultancy shall novate all relevant agreements with other parties that are directly connected to this Agreement to either the Commission or to the incoming Consultancy(s) or third party agencies appointed by the Commission, and shall co-operate in the smooth transition of the Services and any transferring workers at the date of the expiry or termination. For the avoidance of doubt, all related costs shall be borne by the Consultancy.

26. SET OFF

- 26.1 Any claims under this Agreement or any other agreement between the Commission and the Consultancy shall go in liquidation of each other and the balance only shall be considered as a debt between the parties.
- 26.2 For the avoidance of doubt, contingent liabilities shall mature into quantified money claims should the Consultancy go into liquidation or become insolvent,

and set-off under rule 4.90 of the Insolvency Rules or any updated legislation shall apply.

27. MERGER, TAKE-OVER OR CHANGE OF CONTROL

27.1 The Consultancy shall immediately inform the Commission in writing of any proposal or negotiations which may or will result in a merger, take-over, change of control, change of name or status of the Consultancy or any similar developments. The Consultancy shall comply with any request by the Commission for information arising from this development.

28. AMENDMENTS

28.1 A variation or amendment to any Agreement condition is effective only if the Consultancy and Commission have agreed to it in writing.

29. NOTICES

29.1 Any notice, request, instruction or other document to be given hereunder shall be delivered or sent by first class recorded post or by a successful electronic mail or successful facsimile transmission, such electronic mail or facsimile transmission to be confirmed by letter posted within 24 hours to the address of the other party set out in Appendix 5 or other such address as may have been notified.

29.2 Any such notice or other document shall be deemed to have been served at the time of delivery, or if sent by post upon the expiration of 48 hours after posting or if sent by electronic mail or facsimile upon the expiration of 4 hours after despatch.

30. ANTI-WAIVER

30.1 The rights of the Commission under this Agreement are cumulative; nothing in this Agreement excludes or restricts any right which the Commission would have additional to this Agreement, under the general law or any other agreement or document.

30.2 Subject to Sub-Clause 30.3, no act, course of conduct, failure or neglect to act, or acquiescence on the part of the Commission or any person acting on its behalf shall result in the Commission being taken to have waived or being precluded temporarily or permanently from enforcing or relying on:

- a) any provision of this Agreement; or
- b) a breach by the Consultancy of an obligation under it or of the general law; or
- c) any right of the Commission under the general law.

30.3 Sub-Clause 30.2 does not apply as between the Commission and the Consultancy where the Commission expressly notifies the Consultancy in writing that the Commission waives, or will not enforce or rely on a specified provision or breach of right; but this is subject to any condition, limitation or other term attaching to that notification, whether expressly or by reasonable application.

31. SEVERABILITY

- 31.1 If any provision of the Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other provision, all of which shall remain in full force and effect.

32. CONTRACTS (RIGHT OF THIRD PARTIES) ACT

- 32.1 This Agreement is for the sole benefit of the parties to the Agreement. Terms that make reference to third parties are not to be construed as terms purporting to confer a benefit upon such third parties. Nothing in this Agreement confers or purports to confer on any third party any benefit of or right to enforce any term of this Agreement.

33. APPLICABLE LAW

- 33.1 English law is the law applicable to this Agreement and the parties consent to the exclusive jurisdiction of the English courts.

34. ENTIRE UNDERSTANDING

- 34.1 This Agreement embodies the entire 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 and any schedules or annexes.

Authorised for the Commission during the Agresso Web Requisition Process

_____ For the Consultancy

_____ Name (in block capitals)

_____ Date

After the Consultancy has signed above, please return to The Procurement Team, Westward House, Lime Kiln Close, Stoke Gifford, Bristol, BS34 8SR.

[At present it is required that all consultants contracted by the Commission complete and return the statement of independence forms attached to this contract at Appendix 4 (*To access – double click on the icons*).]

APPENDIX 1

SCHEDULE OF WORK

Possible scenarios with Government post the local and European elections on 4th June 2009.

The commencement date for this work is 1st June 2009.

The termination date is 2nd June 2009.

APPENDIX 2

KEY PERSONNEL AND COMMISSION REPRESENTATIVE

KEY PERSONNEL

COMMISSION REPRESENTATIVE

Mark Burr

APPENDIX 3

THE FEE, TRAVELLING AND SUBSISTENCE EXPENSES

THE FEE

The fee shall be **£1000.00** for the provision of Services under the Agreement at the fixed rate of **£1000.00** which is exclusive of VAT.

APPENDIX 4

STATEMENT OF INDEPENDENCE



Statement of
Independence Forms



Statement of
Independence Guidar

Double click to read and complete

APPENDIX 5

FULL NAME AND ADDRESSES FOR NOTICES

Commission's Address for notices

Audit Commission
Westward House
Lime Kiln Close
Bristol
BS34 8SR

Consultancy's Address for notices

Connect Public Affairs Ltd.
Third Floor
Millbank Tower
Millbank
London
SW1P 4QP

Consultancy's full name and registered office or principal place of business if different from above

APPENDIX 6

DIVERSITY MONITORING

The Audit Commission proactively encourages diverse suppliers to participate in our procurement exercises for Goods, Works and Services. We will provide a level playing field of opportunities for all organisations including *Small and Medium Enterprises (SMEs)*, *Black and Minority Ethnic (BME) businesses* and other *diverse suppliers*.

Please complete and return the attached form.



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DiversityForm(Consul