

DATED

201[*]

(1) OXFORDSHIRE LOCAL ENTERPRISE PARTNERSHIP LIMITED

and




(2) [CONSULTANT COMPANY]

CONSULTANCY AGREEMENT

PLEASE VIEW/PRINT THIS AGREEMENT IN COLOUR

This Agreement contains drafting notes and wording in different colours, please use this key to determine what each colour means.

KEY:

	Drafting note to aid drafting of the agreement - read the note, then delete once you have understood and acted upon it.
	Optional wording - consider whether the wording is needed
	This must be completed

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THIS AGREEMENT is dated [DATE]

PARTIES

- (1) OXFORDSHIRE LOCAL ENTERPRISE PARTNERSHIP LIMITED incorporated and registered in England and Wales with company number 09549056 whose registered office is at Jericho Building - Activate Learning - Oxford Campus, Oxpens Road, Oxford, OX1 1SA (OxLEP);
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Consultancy).

AGREED TERMS

1. INTERPRETATION

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

Activity Log: a summary of activities carried out in pursuit of delivering the Services, in the form set out in Schedule 2.

Business of OxLEP: championing Oxfordshire's economic potential, acting as a catalyst and convener to drive a dynamic, sustainable and growing economy in Oxfordshire by establishing robust and effective relationships between businesses, academia and the public sector.

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

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

Commencement Date: [DATE OF COMMENCEMENT OF ENGAGEMENT]

Confidential Information:	information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of OxLEP for the time being confidential to OxLEP and trade secrets including, without limitation, technical data and know-how relating to the Business of OxLEP or any of its suppliers, customers, agents, distributors, shareholders, management or business contacts, including (but not limited to) information that the Consultancy or the Individual creates, develops, receives or obtains in connection with this Engagement, whether or not such information (if in anything other than oral form) is marked confidential.
Data Protection Legislation:	the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.
Day:	7.5 hours in a 24 hour period.
Deemed Employment:	an engagement to which Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 applies.
Engagement:	the engagement of the Consultancy by OxLEP on the terms of this Agreement.
Individual:	[NAME]
Initial Term:	[STATE DURATION OF THIS AGREEMENT]
Insurance Policies:	commercial general liability insurance cover, employer's liability insurance cover, professional indemnity insurance cover, [cyber insurance cover] and public liability insurance cover.

[Public liability insurance protects the insured against claims brought by members of the public. Professional indemnity insurance may be desirable or required if the Consultancy is a member of certain professions. For example, the regulatory bodies of accountants, solicitors, insurance brokers, financial advisers and architects all require their members to take out appropriate professional indemnity insurance. Cyber insurance cover will tend to only be relevant if the Consultancy will be dealing with a lot of sensitive data. If the Consultancy is a data processor under the GDPR, a cyber insurance policy will insure against the costs associated with a data breach but it may not insure against any fines imposed by the ICO as a result of a breach of the GDPR. OxLEP should satisfy itself that insurance policies with the appropriate level of cover are put in place.]

Intellectual Property Rights:	patents, utility models, rights to Inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Invention:	any invention, idea, discovery, development, improvement or innovation made by the Consultancy or by the Individual in connection with the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.
Services:	the services described in Schedule 1.
Substitute:	a substitute for the Individual appointed under the terms of clause 3.3.
Termination Date:	the date of termination of this Agreement, howsoever arising.
UK Data Protection Legislation:	any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.
Works:	all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software programs, inventions, ideas, discoveries, developments, improvements or innovations and all materials embodying them in whatever form, including but not limited to hard copy and electronic form, prepared by Consultancy or the Individual in connection with the provision of the Services.

1.2 The headings in this Agreement are inserted for convenience only and shall not affect its construction.

- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

2. TERM OF ENGAGEMENT

- 2.1 OxLEP shall engage the Consultancy and the Consultancy shall make available to OxLEP the Individual to provide the Services on the terms of this Agreement.
- 2.2 The Engagement shall commence on the Commencement Date and shall continue for this Initial Term, unless terminated earlier in accordance with clause 11 or extended in accordance with clause 2.3.
- 2.3 If OxLEP wishes to extend this Agreement beyond the expiry of the Initial Term then, prior to the expiry of the Initial Term, it shall give the Consultancy at least [one] months' written notice of such intention, specifying the period for such extension, and, subject to the Consultant's agreement, the Agreement will then continue for the extended period specified.

3. DUTIES AND OBLIGATIONS

- 3.1 During the Engagement the Consultancy shall, and (where appropriate) shall procure that the Individual shall:
- (a) provide the Services with all due care, skill and ability and use its or his best endeavours to promote the interests of OxLEP;
 - (b) unless the Individual is prevented by ill health or accident, devote at least [NUMBER] Days in each calendar month to the carrying out of the Services together with such additional time if any as may be necessary for their proper performance subject to OxLEP's prior agreement; and
 - (c) promptly give to OxLEP all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services or the Business of OxLEP.
- 3.2 If the Individual is unable to provide the Services due to illness or injury, the Consultancy shall advise OxLEP of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in accordance with clause 4 in respect of any period during which the

Services are not provided. Should the Services not be provided for a period of [NUMBER] weeks, OxLEP shall be entitled to terminate this Agreement pursuant to clause 11.1(g).

- 3.3 The Consultancy may, with the prior written approval of OxLEP and subject to the following proviso, appoint a suitably qualified and skilled Substitute to perform the Services instead of the Individual, provided that the Substitute shall be required to enter into direct undertakings with OxLEP, including with regard to confidentiality and Intellectual Property. If OxLEP accepts the Substitute, the Consultancy shall continue to invoice OxLEP in accordance with clause 4 and shall be responsible for the remuneration of the Substitute.

[This clause allows the Consultancy to provide, at its own expense, a substitute (who has been approved by OxLEP) to carry out the services in its place. OxLEP must approve any substitute before they are appointed. OxLEP may wish to consider deleting this clause if the personal skills of the Individual are all important to the agreement. If OxLEP is happy for a substitute to be appointed, then they should ensure that the Substitute undertakes to abide by the terms of this agreement, especially with regards to the confidentiality and intellectual property provisions.]

- 3.4 The Consultancy shall use its reasonable endeavours to ensure that the Individual is available at all times on reasonable notice to provide such assistance or information as OxLEP may require.

- 3.5 Unless it or he has been specifically authorised to do so by OxLEP in writing, the Consultancy shall not and the Individual shall not have any authority to incur any expenditure in the name of or for the account of OxLEP.

- 3.6 Unless it or he has been specifically authorised to do so by OxLEP in writing, the Consultancy shall not, and shall procure that the Individual shall not, hold itself out as having authority to bind OxLEP.

- 3.7 The Consultancy shall, and shall procure that the Individual shall, comply with all reasonable standards of safety and comply with OxLEP's health and safety procedures from time to time in force at the premises where the Services are provided and report to OxLEP any unsafe working conditions or practices.

- 3.8 The Consultancy shall, and shall procure that the Individual shall, promptly give to OxLEP all such information and documentation as it may reasonably require from time to time in order for OxLEP to determine whether the Engagement is or will be Deemed Employment and, if OxLEP does so determine, in order to comply with any obligation on OxLEP to deduct tax or national insurance contributions from the fees due under clause 4. The Consultancy shall, and shall procure that the Individual shall, promptly inform OxLEP of any material change to any information or documentation previously provided in compliance with this clause and shall also promptly provide any other information or documentation that it considers (or ought reasonably consider) to be materially relevant to determining whether the Engagement is Deemed Employment.

3.9 The Consultancy shall, and shall procure that the Individual shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

3.10 The Consultancy shall, and shall procure that the Individual shall:

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

(i) a UK tax evasion facilitation offence under section 45(1) of the *Criminal Finances Act*, or

(ii) a foreign tax evasion facilitation offence under section 46(1) of the *Criminal Finances Act 2017*;

4. FEES

4.1 OxLEP shall pay the Consultancy a fee of £[AMOUNT] per Day exclusive of VAT, less any deductions for income tax and national insurance contributions as required by law. On the last working day of each month during the Engagement the Consultancy shall submit to OxLEP an Activity Log and an invoice which gives details of the hours which the Individual has worked, the Services provided and the amount of the fee payable (plus VAT, if applicable) for the Services during that month.

4.2 OxLEP shall be entitled to reject any invoice which it reasonably considers does not provide sufficient details of the hours worked, the Services provided and the amount of the fee payable (plus VAT, if applicable) for the Services during that month.

4.3 In consideration of the provision of the Services, OxLEP shall pay each undisputed invoice submitted by the Consultancy in accordance with clause 4.1, within 30 days of receipt.

4.4 OxLEP shall be entitled to deduct from the fees (and any other sums) due to the Consultancy any sums that the Consultancy or the Individual may owe to OxLEP at any time.

4.5 Payment in full or in part of the fees claimed under clause 4 or any expenses claimed under clause 5 shall be without prejudice to any claims or rights of OxLEP against the Consultancy or the Individual in respect of the provision of the Services.

5. EXPENSES

5.1 Subject to clauses 5.2, 5.3 and 5.4, OxLEP shall reimburse all reasonable expenses properly and necessarily incurred by Consultancy in the course of the Engagement, subject to production of receipts or other appropriate evidence of payment.

5.2 Mileage costs and fares for all travel to and from meetings between OxLEP and the Consultancy shall be included in the fee.

- 5.3 Mileage for travel by the Consultancy to other sites within and outside Oxfordshire for delivery of the Services on behalf of OxLEP will be charged at 45 pence per mile.
- 5.4 Standard class train travel only will be reimbursed for train journeys by the Consultancy to other sites within and outside Oxfordshire for delivery of the Services on behalf of OxLEP.

6. OTHER ACTIVITIES

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

[It is not advisable to place an absolute restriction on the consultant company or the Individual undertaking any other work during the term of the engagement because that could imply an employment relationship which will have adverse financial implications for OxLEP. The fact that the consultant company has other clients and the individual does other work will be a useful indicator of self-employment.]

7. CONFIDENTIAL INFORMATION AND OXLEP PROPERTY

[There is no implied duty of confidentiality owed by one company to another or by a self-employed individual (as there would be for an employee). Therefore, it is important to impose express confidentiality obligations on the consultant company and the individual which cover their activities both during and after the engagement.]

- 7.1 The Consultancy acknowledges that in the course of the Engagement it and the Individual will have access to Confidential Information. The Consultancy has therefore agreed to accept the restrictions in this clause 7.
- 7.2 The Consultancy shall not, and shall procure that the Individual shall not (except in the proper course of its or his duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use its best endeavours to prevent the publication and disclosure of) any Confidential Information. This restriction does not apply to:
- (a) any use or disclosure authorised by OxLEP or required by law;
 - (b) any information which was lawfully known to the Consultancy before being received in the course of this Agreement;
 - (c) any information which was lawfully acquired by the Consultancy after the date of this Agreement, from a third party who is not bound by any obligation of confidentiality to OxLEP; or
 - (d) any information which is already in, or comes into, the public domain otherwise than through Consultancy's or the Individual's unauthorised disclosure.

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

8. DATA PROTECTION

[For this clause, consider whether or not the Consultancy's Services will involve it processing personal data.

If the Consultancy is not going to be processing personal data then this clause 8 and Schedule 3 can be deleted.

If the Consultancy will be processing personal data as part of the Services then it is likely to be a data processor and therefore subject to certain obligations under data protection legislation. Clause 8 reflects GDPR requirements for written provisions to be in place between a controller and a processor. If the Consultancy's services will involve it processing personal data then this clause 8 will need to remain in place and Schedule 3 will need to be completed.

If the Services will involve large amounts of processing of personal data, please speak to Lyn Davies as it may be that further data protection clauses are needed.]

- 8.1 The Consultancy and OxLEP acknowledge that for the purposes of the Data Protection Legislation, OxLEP is the data controller and the Consultancy is the data processor.
- 8.2 The Consultancy and OxLEP will comply with the Data Protection Legislation.
- 8.3 Schedule 3 sets out the scope, nature and purpose of the processing by the Consultancy, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation (Personal Data)) and categories of data subject.
- 8.4 The Consultancy shall, and shall procure that the Individual shall, in relation to any Personal Data processed in connection with the Engagement:
- (a) Process that Personal Data only on written instructions of OxLEP.
 - (b) Keep the Personal Data confidential.
 - (c) Comply with OxLEP's data protection policy.
 - (d) Comply with OxLEP's reasonable instructions with respect to processing Personal Data.
 - (e) Not transfer any Personal Data outside of the European Economic Area without OxLEP's prior written consent.
 - (f) Assist OxLEP in responding to any data subject access request and to ensure compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, privacy impact assessments and consultations with supervisory authorities or regulators.

- (g) Notify OxLEP without undue delay on becoming aware of a Personal Data breach or communication which relates to OxLEP's or Consultancy's compliance with the Data Protection Legislation.
- (h) At the written request of OxLEP, delete or return Personal Data and any copies thereof to OxLEP on termination of the Engagement unless required by the Data Protection Legislation to store the Personal Data.
- (i) Maintain complete and accurate records and information to demonstrate compliance with this clause 8.4.

8.5 The Consultancy shall ensure that it has in place appropriate technical or organisational measures, reviewed and approved by OxLEP, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

8.6 OxLEP agrees that any Substitute appointed under clause 3.3 is a third-party processor of Personal Data under this agreement. The Consultancy confirms that it will enter into a written agreement, which incorporates terms which are substantially similar to those set out in this clause 8, with the Substitute. The Consultancy shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Clause 8.6.

8.7 The Consultancy shall have personal liability for and shall indemnify OxLEP for any loss, liability, costs (including legal costs), damages, or expenses resulting from any breach by the Consultancy of the Data Protection Legislation, and shall maintain in force full and comprehensive Insurance Policies.

9. INTELLECTUAL PROPERTY

[Most IP rights (notably copyright and rights in designs) arising as a result of services provided under a consultancy agreement will normally belong to the consultant. As OxLEP will usually want to take ownership of these rights, these clauses are important.]

9.1 The Consultancy warrants to OxLEP that it has obtained from the Individual a written and valid assignment of all existing and future Intellectual Property Rights in the Works and the Inventions and of all materials embodying such rights and a written irrevocable waiver of all the Individual's statutory moral rights in the Works, to the fullest extent permissible by law, and that the Individual has agreed to hold on trust for the Consultancy any such rights in which the legal title has not passed (or will not pass) to the Consultancy. The Consultancy agrees to provide to OxLEP a copy of this assignment on or before the date of this Agreement.

9.2 The Consultancy hereby assigns to OxLEP all existing and future Intellectual Property Rights in the Works and the Inventions and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this Agreement, the Consultancy holds legal title in these rights and inventions on trust for OxLEP.

9.3 The Consultancy undertakes to OxLEP:

- (a) to notify to OxLEP in writing full details of all Inventions promptly on their creation;
- (b) to keep confidential the details of all Inventions;
- (c) whenever requested to do so by OxLEP and in any event on the termination of the Engagement, promptly to deliver to OxLEP all correspondence, documents, papers and records on all media (and all copies or abstracts of them), recording or relating to any part of the Works and the process of their creation which are in its or the Individual's possession, custody or power;
- (d) not to register nor attempt to register any of the Intellectual Property Rights in the Works, nor any of the Inventions, unless requested to do so by OxLEP; and
- (e) to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the Works and the Inventions has passed, or will pass, to OxLEP,

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

9.4 The Consultancy warrants that:

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

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

9.5 The Consultancy agrees to indemnify OxLEP and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by OxLEP, or for which OxLEP may become liable, with respect to any claim relating to the Works or Inventions supplied by Consultancy to OxLEP during the course of providing the Services. Consultancy shall maintain adequate liability insurance coverage and ensure that OxLEP's interest is noted on the policy, and shall supply a copy of the policy to OxLEP on request. OxLEP may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to Consultancy.

- 9.6 The Consultancy acknowledges that no further remuneration or compensation other than that provided for in this Agreement is or may become due to the Consultancy in respect of the performance of its obligations under this clause 9.
- 9.7 The Consultancy undertakes to execute all documents, make all applications, give all assistance and do all acts and things, at the expense of OxLEP and at any time either during or after the Engagement, as may, in the opinion of OxLEP, be necessary or desirable to vest the Intellectual Property Rights in, and register or obtain patents or registered designs in, the name of OxLEP and to defend OxLEP against claims that works embodying Intellectual Property Rights or Inventions infringe third party rights, and otherwise to protect and maintain the Intellectual Property Rights in the Works. The Consultancy confirms that the Individual has given written undertakings in the same terms to the Consultancy.
- 9.8 The Consultancy irrevocably appoints OxLEP to be its attorney in its name and on its behalf to execute documents, use the Consultancy's name and do all things which are necessary or desirable for OxLEP to obtain for itself or its nominee the full benefit of this clause.

10. INSURANCE AND LIABILITY

- 10.1 Nothing in this Agreement shall limit or exclude the Consultancy's liability for:
- (a) Death or personal injury caused by its or the Individual's negligence;
 - (b) Fraud or fraudulent misrepresentation;
 - (c) Its indemnity obligations in clauses 8.7, 9.5 or 13.2.
 - (d) Any other liability which cannot be limited or excluded by law.
- 10.2 The Consultancy shall have liability for [and shall indemnify OxLEP for] any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Consultancy or the Individual of the terms of this Agreement including any negligent or reckless act, omission or default in the provision of the Services and shall accordingly maintain in force during the Engagement full and comprehensive Insurance Policies.
- [You may find that a Consultancy objects to indemnifying OxLEP for its breach of contract. If it does, the blue wording in clause 10.2 could be deleted and the consultancy will be liable for its breach of contract, but an indemnity will be more valuable to OxLEP than damages for breach of contract.]*
- 10.3 Subject to clause 10.1, the Consultancy's total liability to OxLEP shall be the limit of its cover under the relevant Insurance Policy.
- 10.4 The Consultancy shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to OxLEP and that the level of cover and other terms of insurance are acceptable to and agreed by OxLEP.
- 10.5 The Consultancy shall on request supply to OxLEP copies of the Insurance Policies and evidence that the relevant premiums have been paid.

10.6 The Consultancy shall comply (and shall procure that the Individual complies) with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Consultancy is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Consultancy shall notify OxLEP without delay.

11. TERMINATION

11.1 Notwithstanding the provisions of clause 2.2, OxLEP may terminate the Engagement with immediate effect by notice in writing and without any liability to make any further payment to the Consultancy (other than in respect of amounts accrued before the Termination Date) if at any time:

- (a) The Consultancy or the Individual commits any gross misconduct affecting the Business of OxLEP;
- (b) The Consultancy or the Individual commits any serious or repeated breach or non-observance of any of the provisions of this Agreement or refuses or neglects to comply with any reasonable and lawful directions of OxLEP;
- (c) the Individual is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);
- (d) the Consultancy or the Individual is, in the reasonable opinion of OxLEP, negligent or incompetent in the performance of the Services;
- (e) the Individual is declared bankrupt or makes any arrangement with or for the benefit of his creditors or has a county court administration order made against him under the County Court Act 1984;
- (f) the Consultancy makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding-up order is made or an administrator or receiver is appointed in relation to the Consultancy;
- (g) the Consultancy or the Individual is unavailable to provide the Services pursuant to clause 3.2;
- (h) the Consultancy or the Individual commits any breach of OxLEP's policies and procedures; or
- (i) the Consultancy or the Individual commits any offence under the Bribery Act 2010.

11.2 The rights of OxLEP under clause 11.1 are without prejudice to any other rights that it might have in law or under this Agreement. Any delay by OxLEP in exercising its rights to terminate shall not constitute a waiver of these rights.

12. OBLIGATIONS ON TERMINATION

12.1 Prior to termination, the Consultancy shall, at OxLEP's request work with any successor in order to ensure an effective handover of any ongoing work.

12.2 On the Termination Date the Consultancy shall, and shall procure that the Individual shall:

- (a) immediately deliver to OxLEP all OxLEP Property and original Confidential Information which is in its or his possession or under its or his control;
- (b) subject to OxLEP's data retention guidelines, irretrievably delete any information relating to the Business of OxLEP stored electronically that is in its or his control or possession outside the premises of OxLEP; and
- (c) provide a signed statement that it or he has complied fully with its or his obligations under this clause 12.2, together with such evidence of compliance as OxLEP may reasonably request.

13. STATUS

13.1 The relationship of the Consultancy (and the Individual) to OxLEP will be that of independent contractor and nothing in this Agreement shall render it (nor the Individual) an employee, worker, agent or partner of OxLEP and the Consultancy shall not hold itself out as such and shall procure that the Individual shall not hold himself out as such.

13.2 The Consultancy shall be fully responsible for and shall indemnify OxLEP for and in respect of the following:

- (a) subject to clause 13.3, any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the Individual in respect of the Services, where such recovery is not prohibited by law. The Consultancy shall further indemnify OxLEP against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by OxLEP in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of OxLEP's negligence or wilful default;
- (b) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Individual against OxLEP arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of OxLEP.

- 13.3 The indemnity in clause 13.2(a) does not apply to any income tax or National Insurance contributions deducted by OxLEP from the fees due under clause 4 prior to payment to the Consultancy following a status determination by OxLEP that the Engagement is Deemed Employment.
- 13.4 OxLEP may at its option satisfy the indemnity in clause 13.2 (in whole or in part) by way of deduction from payments due to the Consultancy.
- 13.5 The Consultancy warrants that it is not nor will it prior to the cessation of this Agreement, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

[A managed service company is a company which is a business which: (a) consists of wholly or mainly providing directly or indirectly the services of a large number of individuals to other persons; and (b) any such individual is not exercising control over the business. Payments for the services are made (directly or indirectly) to the individual. The way in which payments are made would result in the individual receiving a higher amount than if the payments were taxed as employment income.

It is important to keep clause 13.5 in the Agreement because if the Consultancy is part of a managed service company then it must operate PAYE and employed earner NICs on all payments made to the individual in return for their services. Third parties, including the client to whom the services of the worker are supplied (here OxLEP), may, in certain circumstances, be liable for the unpaid PAYE and NICs debts of a managed service company.

If you think that you are dealing with a managed service company, please speak to Lyn Davies.]

14. NOTICES

- 14.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at the address given in this Agreement or as otherwise notified in writing to the other party.
- 14.2 Unless proved otherwise, any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the address given in this Agreement or given to the addressee; and
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.
- 14.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 14.4 A notice given under this Agreement is not valid if sent by e-mail.

15. ENTIRE AGREEMENT

- 15.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 15.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 15.4 Nothing in this clause shall limit or exclude any liability for fraud.

16. VARIATION

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

17. COUNTERPARTS

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

18. THIRD PARTY RIGHTS

- 18.1 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 18.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

19. GOVERNING LAW

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

20. JURISDICTION

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

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

SCHEDULE 1 - SERVICES

[Please complete the following form which should set out the details of the work to be carried out, the location(s) of where the services are to be performed, the reporting procedure and any milestones for completion of particular parts of any project].

SERVICES	[INSERT DETAILED DESCRIPTION OF WORK TO BE CARRIED OUT]
LOCATION	[INSERT LOCATION WHERE SERVICES ARE TO BE PERFORMED]
REPORTING PROCEDURE	[SET OUT REPORTING PROCEDURE]
REPORT TO	[INSERT NAME] [ADDRESS] [TELEPHONE] [EMAIL]
MILESTONES	[INSERT MILESTONES]

SCHEDULE 2 - ACTIVITY LOG

CONSULTANT'S MONTHLY ACTIVITY LOG

Month:

Date	Activity	Number of Hours
	TOTAL HOURS	

Signed:

Date:

SCHEDULE 3- PROCESSING, PERSONAL DATA AND DATA SUBJECTS

Part 1 - Processing by Consultancy

1. **Scope:** [Insert]
2. **Nature:** [Insert]
3. **Purpose of the Processing:** [Insert]
4. **Duration of the Processing:** [Insert]

Part 2 - Types of Personal Data

[Insert]

Part 3 - Categories of Data Subject

[Insert]

Signed by [NAME OF DIRECTOR] for and on behalf of OXFORDSHIRE LOCAL ENTERPRISE PARTNERSHIP LIMITED

.....

Director

Signed by [NAME OF DIRECTOR] for and on behalf of [NAME OF CONSULTANCY]

.....

Director