



CONSULTANCY STAFF

**(Engaging: Consultants, Interim Managers, Contractors
and Temporary Agency Workers)**

FINANCIAL PROCEDURE 3

**OWNER: ASSISTANT CHIEF EXECUTIVE –
PEOPLE AND ORGANISATION**

**Version 4.0
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CONTENTS

Part	Page
1. Definitions	3
2. Introduction & Background	7
3. Employment Status	8
4. Engaging non- permanent Workers	7
5. Temporary Agency Staff	9
6. Links to Guidance Notes and Forms to Use	10
Appendix A – A Guide to Employment Status	11
Appendix B – Self Employed Status Certificate	15
Appendix C – Employer Confirmation of Self Employed Status	16
Appendix D – Central Bedfordshire Council Agreement	17

You should read this Financial Procedure in conjunction with the Council's -

- Code of Financial Governance
- Contract Procedures

1. DEFINITIONS

Terminology	Definitions	Characteristics
<p>Consultant - Sole Trader and / or as an Employee of a Company specialising in Consultancy</p>	<p>A professional who provides advice in a particular area of expertise such as accountancy, the environment, technology, law, human resources, marketing, finance, economics, public affairs, communication, engineering, or waste management.</p> <p>A consultant is usually an expert or a professional in a specific field and has a wide knowledge of the subject matter. A consultant may work for a consultancy firm or may be self-employed, and engages with multiple and changing clients. Thus, the Council has access to deeper levels of expertise than would be feasible for them to retain in-house, and to purchase only as much service from the outside consultant as desired.</p>	<p>Consultant – Sole Trader Normally commissioned through a competitive quotation or tender process. Passes the Self Employed ‘test’. (Self-employed if the person are in business on their own account and bear the responsibility for the success or failure of that business. See Appendix A). Procurement Process: Quotation or Tender</p> <p>Consultant – Company Employee They are an employee of a consultancy, that is a company that provides consultants to clients on a larger scale, though usually related, skill areas. This has advantages both to the client and to the consultant by:</p> <ul style="list-style-type: none"> • Providing a pool of talent that can be quickly mobilised as required • Reassuring the client about the quality of the consultants supplied • Giving the client access to the experience and methodologies of the whole consultancy rather than just an individual <p>In both cases the consultant / consultancy will provide a particular type of knowledge or service for a specific period of time. Procurement Process: Quotation or Tender</p>

Terminology	Definitions	Characteristics
<p>Interim Manager</p>	<p>Interim management can be seen as a short-medium term assignment to cover a vacant role. In this situation, a permanent role may be necessary but impossible to find at short notice. Additionally, there may be nobody internally who is suitable for, or available to take up, the position in question</p>	<p>Interim Managers will in the main be sourced from a specialist agency. <u>They will either be employed by the Council on a short fixed term contract or will be employed by the agency concerned.</u> Interim Managers will be responsible and accountable line managers who will implement and manage a section of the Council's business or project in their own right.</p> <p>Procurement Process: Specialist Recruitment Provider. (Currently: Carlisle Managed Solutions in the first instance. If Carlisle Managed Solutions are unable to source then Quotation or Tender)</p>

Terminology	Definitions	Characteristics
<p>Contractor</p>	<p>Sometimes, it is not a straightforward matter to determine who is an independent contractor and who should be classified as an employee.</p> <p>To determine this, look at the agreement between the parties. While some independent contractors may work for a number of different organisations throughout the year, there are also many who have independent contractor status even though they work for the same organisation for the entire year.</p> <p>An independent contractor is a person or business which provides goods or services to another entity under terms specified in a contract or within a verbal agreement. Unlike an employee, an independent contractor does not work regularly for an employer but works as and when required. Contractors often work through a limited company which they themselves own.</p>	<p>Generally speaking, independent contractors retain control over their schedule and number of hours worked, jobs accepted and the performance of their job. This contrasts with the situation for Council employees, who usually work to the standard required by the Council whose performance is directly supervised by their line manager.</p> <p>If in doubt, the self employed 'test' should be applied:</p> <ul style="list-style-type: none"> • Can they hire someone to do the work for them or engage helpers at their own expense? • Do they risk their own money? • Do they provide the main items of equipment they need to do their job, not just the small tools many employees provide for themselves? • Do they agree to do a job for a fixed price regardless of how long the job may take? • Can they decide what work to do, how and when to do the work and where to provide the services? • Do they regularly work for a number of different people? • Do they have to correct unsatisfactory work in their time and at their own expense? <p>Is the response is YES to the above questions then the person will be self employed.</p> <p>Procurement Process: Quotation or Tender process</p>

Terminology	Definitions	Characteristics
<p>Temporary Worker (Temp)</p>	<p>Temporary Worker or “Temporary Employment” refers to a situation where the employee is expected to leave the employer within a pre determined period of time. Temporary employees are sometimes referred to as “temps” . They may work full-time or part-time, depending on the individual case. A Temporary Staffing Agency finds and retains workers. The Council’s managers in need of short-term workers, contract with the temp agency to send a temporary worker. The Council pays the Agency for the Temp on an agreed basis.</p>	<p>When a temporary worker agrees to take on an assignment, he or she receives instructions relating to the job. Information is provided on for example the correct attire to wear, hours of work, the wage to be paid, and who to report to on arriving. The temporary employee will normally be paid by the hour and will complete a weekly timesheet. This is forwarded to the Temporary Staffing Agency and forms the basis of the workers weekly wage.</p> <p>Procurement Process: Specialist Recruitment Provider. (Currently: Carlisle Managed Solutions)</p>

2. INTRODUCTION & BACKGROUND

- 2.1 The Council spend significant expenditure each year on a range of Consultants, Interim Managers, Contractors and Temporary agency staff. This Financial Procedure is intended to clarify the arrangements and to offer guidance as to the processes and procedures Council staff must follow.
- 2.2 This Financial Procedure highlights the main control principles to be applied and therefore complement information that may be contained in HMRC (Her Majesty's Revenue and Customs) Notes of Guidance, on Employment of Individuals Claiming Self Employment, the Constitution and Financial Regulations and the Audit Commission Guidance on Use of Agency and temporary staff.
- 2.3 The intention is to reduce the risk of any tax liability and possible litigation on employment rights from the prospective employee or individual.
- 2.4 Appendix A has been attached to guide employees in arriving at their decision as to the status of the individual, where in doubt consult Human Resources or Procurement for guidance.
- 2.5 Directors must ensure that their staff are familiar with the Council's guidelines on use of external workers and understand the distinction between employment and a contract for consultancy services. If consultancy staff are brought in to cover a vacant post or carry out a role similar to that of a member of staff, the Council will be required to treat them as employed for tax purposes and must pay them via the payroll. In these circumstances the Council's recruitment policies must be applied. This does not apply to staff brought in to cover established posts or for temporary assignments that are the direct employees limited companies of a Temporary Staff Agency.
- 2.6 Where a consultant is required to carry out a project which has a clear start and end date and is described in a brief or specification, and where the consultant will be taking on the risk and providing their own premises, equipment and insurance etc, then it is likely that the work will be governed by a contract and the consultant will be paid via the creditors system. In these circumstances the Council's Contract Procedure rules must be applied. The insurance requirements must be clear in the documentation supporting the contract and evidence that the policy is in place should be obtained from the consultant.
- 2.7 Directors must ensure that where payments are to be made to consultants other than through the Council's payroll system, that there is a clear justification for this and that there are no tax implications that may arise. In circumstances where it is unclear whether the use of a consultant is employment or a contract for services, Directors must consult the Human Resources or the Procurement Team.
- 2.8 Where a Director employs a consultant or external contractor to undertake any function which might otherwise be undertaken by a

direct employee of the Council, the individual(s) concerned must act in accordance with these regulations and must be made aware by the appropriate Director of this requirement.

3 EMPLOYMENT STATUS

3.1 In simple terms, there are five categories of employment recognised by the law and the tax system. A person could be classed as a **worker**, a **self-employed person**, a **contractor**, an employee, or a director.

3.2 As an employer Central Bedfordshire Council must recognise the category in which people work to ensure we fulfil any legal and tax obligations.

3.3 A person's employment status will depend on whether their contract is a contract of employment, a contract for the personal performance of work or a contract for services.

3.4 A **worker** is a wide category - it includes any individual person who works for you, whether under a contract of employment or other type of contract, but is not self-employed. This category can include casual workers, agency workers or some freelance workers but the terms of the contract will determine their employment status

3.5 A **self-employed person** - as opposed to an employee or a worker - often depends on their independence. If a person is not deemed to be self employed then normal recruitment guidelines must be followed. Although there is no individual test that is decisive, a person is likely to be classed as self-employed if they:

- have the final say in how the business is run
- risk their own money in the business
- are responsible for the losses as well as profits of the business
- provide the main items of equipment they need to do the job
- are free to hire other people on their own terms to do the work they have taken on and pay them at their own expense
- are responsible for correcting unsatisfactory work in their own time and at their own expense.

3.6 It is common for businesses to use **contractors** and **subcontractors** instead of hiring permanent staff when the work is short-term and expert skills are needed for a finite period or the extent of the workload is unknown. These types of staff are not employees of the business but have a legally binding contract to provide certain services. Subcontractors undertake a contract from a contractor.

4 ENGAGING NON-PERMANENT WORKERS

4.1 When engaging any type of external person it is the recruiting manager's responsibility to ensure that all relevant checks have been carried out before the start of the contract, including but not limited to:

- Relevant selection

- Reference
 - CRB checks (if required) carried out within the last 12 months
 - Medical fitness
- 4.2 In the case of self employed persons the Management Guidelines (Appendix A) sets out a series of questions that determine whether an individual can be treated as self employed. These questions have been provided by the HMRC (Her Majesty's Revenue and Customs).
- 4.3 If the individual is deemed to be employed by the Council then they must be paid through the payroll and as such must follow the council's recruitment and selection procedures.
- 4.4 Assuming the individual can be treated as self employed they will be required to sign a Self Employed Status Certificate (Appendix B) confirming their status. A copy of this form must be attached to the first invoice submitted by the Consultant and the original must be retained by the Assistant Director for audit purposes.
- 4.5 The Budget Manager will also be required to sign the Employer Confirmation of Self Employed Status (Appendix C) to confirm that the individual is self employed. The form must be retained by the Assistant Director for audit purposes.
- 4.6 The Central Bedfordshire Council Agreement (Appendix D) confirming the consultant's appointment and the terms must be completed and signed by both parties.
- 4.7 The Budget Manager must then ensure that they have approval to procure prior to engagement. If the individual/company has not been used before they must be set up on SAP. The relevant forms must be authorised by the Budget Manager and sent with any relevant supporting documentation to Exchequer Services.
- 4.8 Vendors are given their own unique reference number when set up on the system. This number is provided to the procurers, by Exchequer Services, in order that they can raise a Purchase Order.
- 4.9 The signed Central Bedfordshire Council Agreement, Self Employed Status Certificate, Employer Confirmation of Self Employed Status must be retained. Invoices are raised against a Purchase Order number by the self-employed consultant.

5. TEMPORARY AGENCY STAFF

- 5.1 Officers should use temporary staff when appropriate such as where it has been difficult to recruit interim staff or in case of sudden departure of an employee or for a special project where the Council feels that the job does not warrant a permanent member of staff.
- 5.2 In the case of Temporary Agency staff or an Interim Manager they will be employed directly by the agency or via a limited company via an agency.

- 5.3 If the agency has not been used before, the procurer will complete a SAP Vendor Master Data Maintenance form.
- 5.4 Vendors are given their own unique reference number when set up on the system. This number is provided to the procurers, by Exchequer Services, in order that they can raise a Purchase Order.
- 5.5 Invoices are raised against a Purchase Order number by the agency.
- 5.6 The Line Manager must terminate the agency staff contract by completing the Termination Form.

6. LINKS TO GUIDANCE NOTES AND FORMS TO USE

- 6.1 Appendix A – Guidance to Employment Status
This provides a link and extract from the HMRC website and information, that aims to provide an indication of whether an employment is classed as Self-Employed or not.
- 6.2 Appendix B – Self Employed Status Certificate
This gives/is a pro forma to be signed by the External Person to state that they consider themselves Self-Employed.
This needs to be signed before work commences.
- 6.3 Appendix C – Employer Confirmation of Self-Employed Status
This gives/is a pro forma to be signed by the Employer to state that they consider the External Person to be Self-Employed.
This needs to be signed before work commences.
- 6.4 Appendix D - Central Bedfordshire Council Agreement
This gives/is a pro forma contract to be signed by both the Employer and External Person to state that they have made the necessary agreements.
This needs to be signed before work commences.

A GUIDE TO EMPLOYMENT STATUS

The decision as to whether someone is employed or self employed is often a difficult one, and mistakes can be very costly.

Departments and Establishments **must**, therefore, adhere to the procedure set out in this Appendix to assess the employment status of a worker. This has been agreed with the Inland Revenue at Bedford and any deviation from it could result in the Department or Establishment incurring the Income Tax liability of the individual and the National Insurance liability of both the individual and the Council. In addition, there could be wider ranging pay and employment law consequences if the individual is subsequently found to be an employee.

If Departments or Establishments have any doubt at all after following the procedure set out in the Appendix, they should ensure that the individual is set up on the payroll by completing all necessary starter documentation e.g. appointment form, bank details etc., pending receipt of such evidence that conclusively confirms that the individual is self employed. Should departments or Establishments have any queries regarding the guidance as set out, they should contact **HR Solutions, Ext. 44005** for a decision **before** the individual commences work.

Below is an extract from the HMRC guidance,

Her Majesty's Revenue & Customs Guidance:

Extract:

6.5 Introduction

This general guide to employment status for tax and National Insurance contributions (NICs) will help in deciding whether you are an employee or self-employed. Although it is aimed at workers, it will also be useful for those who engage workers.

Your employment status will affect how much tax and NICs you pay and how it will be collected. The type of National Insurance that you pay will affect some types of benefits, for example, whether you can receive Statutory Sick Pay when you are unable to work through ill health.

The person you work for needs to decide your correct employment status. It is their responsibility and it is important that they get this right so that you

- get the appropriate employment rights
- pay the right amount of tax and NICs, and
- have access to the correct benefits.

If you are an employee or self-employed for tax purposes then you are also likely to be regarded as having that same status for employment rights and benefits purposes. You can get further information about these issues from

- Department of Trade and Industry (for employment rights) at www.dti.gov.uk and by phoning **020 7215 5000**, and
- Department for Work and Pensions (for benefits) at www.dwp.gov.uk and by phoning **020 7712 2171**.

If you are employed, your employer will need to deduct tax from your pay (through PAYE) and Class 1 NICs. If you are self-employed, you are responsible for paying your own tax and NICs.

***Just because you are employed or self-employed in one job, it doesn't necessarily mean you will be in another job.**

6.6 Determining employment status

The law for tax and social security legislation does not define 'employment' and 'self-employment'. But, over the years, the Courts have considered this issue and their guidance on whether an individual is an employee or self-employed is known as case law.

You or the person you work for, cannot simply choose whether you will be an employee or self-employed. It will depend on the terms, conditions and facts of your engagement.

For example, if you work in the construction industry and possess a CIS4 or CIS6 card that does not mean you are automatically self-employed for each engagement. For more information see the [Employment Status manual](#).

Broadly, you are

- **self-employed** if you are in business on your own account and bear the responsibility for the success or failure of that business, and
- **employed** if you personally work under the control of someone and do not run the risks of having a business yourself.

Help and advice

If you are unsure, or you have any questions, you need to speak to your local Status Inspector or Status Officer. They are responsible for enquiries and decisions about employment status. You can ask at your local Inland Revenue Enquiry Centre for the name and telephone number of the Status Inspector or Status Officer.

You can find detailed guidance by viewing our Employment Status Manual on our website at www.inlandrevenue.gov.uk/manuals/esmmanual

6.7 Employed or self-employed?

Employee

If you can answer 'Yes' to all of the following questions, you are probably an employee.

- Do you have to do the work yourself?
- Can someone tell you at any time what to do, where to carry out the work or when and how to do it?
- Do you work a set amount of hours?
- Can someone move you from task to task?
- Are you paid by the hour, week, or month?
- Can you get overtime pay or bonus payment?

Self-employed

If you can answer 'Yes' to all of the following questions, it will usually mean you are self-employed.

- Can you hire someone to do the work for you or engage helpers at your own expense?
- Do you risk your own money?
- Do you provide the main items of equipment you need to do your job, not just the small tools many employees provide for themselves?
- Do you agree to do a job for a fixed price regardless of how long the job may take?
- Can you decide what work to do, how and when to do the work and where to provide the services?
- Do you regularly work for a number of different people?
- Do you have to correct unsatisfactory work in your own time and at your own expense?

Casual, or part-time working

The same considerations to determine employment status will apply even if you work part-time or on a casual basis. Unless you can answer 'Yes' to the self-employed questions above, you will normally be an employee.

More than one job

If

- you have more than one job, or
- you work for a number of different people for a few days or weeks at a time you will need to answer the questions on pages [5 and 6](#) for **each** job.

If you provide services to many people and do not work regularly for one person to the exclusion of others, this may affect whether your work for each is as an employee, or as a self-employed person.

***Remember, just because you are employed or self-employed in one job, it doesn't necessarily mean you will be in another job.**

You could even be an employee and self-employed at the same time. For example, you could

- be employed as a part-time shop assistant and spend the rest of your time running your own business from home, or
- work full-time in a factory as an employee, and run a part-time business in the evening or weekends.

You may have a number of casual or part-time activities, and in some may be an employee and in others self-employed. It all depends on the facts.

To: Central Bedfordshire Council, _____
School/Establishment

SELF EMPLOYED STATUS CERTIFICATE

I confirm that, having looked at HMRC guidance, I consider myself self employed for the services that I am performing for Central Bedfordshire Council.

My tax office is: _____ (district)

Address:

Telephone Number: _____

and my Tax reference number is: _____ (if known and appropriate)

I authorise you to confirm this information with my Tax Office.

I understand that it is my responsibility to declare all earnings for taxation purposes in accordance with statutory provisions.

Signed:

Name:

Address:

Date:

For Office use:

Self employment notified:

Date of letter of notification: _____ Reference:

(Copy of letter to the HMRC to be attached to and filed with this certificate).

To: Central Bedfordshire Council, _____
School/Establishment

EMPLOYER CONFIRMATION OF SELF EMPLOYED STATUS

This must be completed by the line manager within the Council who has responsibility for commissioning the individual to undertake work for the Council

I confirm that I have asked the questions listed below of the individual and considered them myself in light of the circumstances of this engagement. The answers to the questions indicated that the engagement of this individual is on a self employed basis.

Name of Individual Engaged _____

Certification by Line Manager:.....

Self employed status: All answers must indicate “YES”

• Are you ultimately responsible for how the business is run? Do you risk your own capital in the business? Are you responsible for bearing losses as well as taking profits?	Yes / No
• Do you yourself control what you do, whether you do it, how you do it, and when and where you do it? (although many employees have considerable independence)	Yes / No
• Do you provide the major items of equipment you need to do your job? (not just the small tools which many employees provide for themselves)	Yes / No
• Are you free to hire other people, on terms of your own choice, to do the work that you have agreed to undertake? (but remember that an employee may also be authorised to delegate work or to engage others on behalf of his or her employer)	Yes / No
• Do you have to correct unsatisfactory work in your own time and at you own expense?	Yes / No

Employee status: All answers must indicate “YES”

• Do you have to do the work that you have agreed to undertake yourself (that is, you are not allowed to send a substitute or hire other people to do it)?	Yes / No
• Can someone tell you what to do, when to do it and how to do it?	Yes / No
• Does someone provide you with holiday pay, sick pay or a pension? (although a lot of employees do not get any of these)	Yes / No
• Are you paid so much an hour, a week or a month? Can you get overtime pay? (although many employees are paid by commission or on a piece work basis)	Yes / No
• Are you expected to work set hours, or a given number of hours a week or month?	Yes / No
• Do you work wholly or mainly for one business? (but remember that many employees work for more than one employer)	Yes / No
• Are you expected to work at the premises of the person you are working for, or at a place or places they decide? (but remember that a self employed person such as a plumber may, by the nature of the job, have to work at the premises of the person who engages him or her)	Yes / No

CENTRAL BEDFORDSHIRE COUNCIL AGREEMENT

APPOINTMENT OF SELF EMPLOYED CONTRACTOR



TERMS AND CONDITIONS OF CONTRACT

FOR

THE PROVISION OF A CONSULTANCY SERVICE

Contract Name:

Contract Reference Number:

(Should you have any queries or questions relating to this document – please contact the Head of Procurement)

CONTENTS

1. DEFINITIONS AND INTERPRETATIONS.....	19
1.1 ACT OF PARLIAMENT.....	19
1.2 AGREEMENT.....	19
1.3 ASSIGNMENT.....	19
1.4 AUTHORISED OFFICER.....	19
1.5 CONSULTANT'S REPRESENTATIVE.....	20
1.6 COUNCIL'S REPRESENTATIVE.....	20
1.7 DAY, WEEK, MONTH AND YEAR.....	20
1.8 DELIVERABLES.....	20
1.9 ENGLISH LAW.....	20
1.10 HEADINGS.....	20
1.11 MEANING OF WORDS.....	20
1.12 PROPOSAL.....	20
2. ENGAGEMENT.....	21
3. TERM.....	21
4. CONDITIONS OF ENGAGEMENT.....	21
5. FEES.....	22
6. EXPENSES.....	22
7. PAYMENT.....	22
8. COPYRIGHT.....	22
9. CONFIDENTIALITY.....	23
10. LIABILITY AND INSURANCE.....	23
11. DEFAULT.....	23
12. TERMINATION.....	25
13. ENTICEMENT.....	25
14. UNDERTAKINGS BY THE CONSULTANT.....	25
15. ASSIGNMENT.....	25
16. FORCE MAJEURE.....	26
17. WAIVER.....	26
18. NOTICES.....	26
19. SURVIVAL.....	26
20. VALIDITY OF AGREEMENT PROVISIONS.....	26
21. RESOLVING DISPUTES.....	26
22. STATUS OF CONSULTANT.....	26
23. THIRD PARTY RIGHTS.....	27

This Contract is made [insert date]

B E T W E E N

- o CENTRAL BEDFORDSHIRE COUNCIL of Priory House, Monks Walk, Chicksands, Shefford, Bedfordshire, SG17 5TQ (“the Council”); and
- o [insert contractor name] (“the Consultant”) whose registered office is at [insert contractor address]

taken together “the Parties”.

INTRODUCTION

- (A) The Council requires the Consultant or the Consultant’s Representative to undertake a work on its behalf and for it.
- (B) The Consultant or the Consultant’s Representative agrees to provide the services required by the Council on the terms set out in this Agreement.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATIONS

In these Conditions the following expressions shall have the meanings hereby ascribed to them:-

1.1 Act of Parliament

A reference to any Act of Parliament, or to any Order, Regulation, Statutory Instrument, or the like shall include a reference to any amendments or re-enactment of the same.

1.2 Agreement

means this agreement and the documents referred to in Clause 3. hereof.

1.3 Assignment

means the work to be carried out / professional service to be provided by the Consultant and/or the Consultant’s Representative as detailed in the quotation documents.

1.4 Authorised Officer

means the Employee of the Council authorised for the purposes of managing this Agreement.

1.5 Consultant's Representative

means the person named in the Proposal as having primary responsibility for the carrying out of the Assignment, where the Consultant is a Company providing the expertise of its employee.

1.6 Council's Representative

means the person specified by the Council as being the person to whom the Consultant's Representative should report.

1.7 Day, week, month and year

"Day, week, month and year" mean calendar day, calendar week, calendar month and calendar year respectively.

1.8 Deliverables

means all things which are to be provided to the Council by the Consultant as part of the Assignment including, but not limited to, advice, brochures, computer programs, oral and written reports.

1.9 English Law

The Contract shall be governed by and construed in accordance with English Law, and the English Courts shall have jurisdiction over any dispute or difference which shall arise between the Council or the Authorised Officer and the Contractor out of or in connection with this Contract.

1.9 Headings

Condition headings and notes are for ease of reference only and shall not affect construction of the Contract.

1.10 Headings

Condition headings and notes are for ease of reference only and shall not affect construction of the Contract.

1.11 Meaning of words

Words importing the masculine gender include the feminine gender; words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa.

1.12 Proposal

means any Proposal or tender submitted by the Consultant in connection with the Assignment, a copy of which is annexed hereto.

2 ENGAGEMENT

- 2.1 The Consultant and/or the Consultant's Representative purports to have the know-how, qualifications and necessary ability to undertake the Assignment.
- 2.2 The Consultant and/or the Consultant's Representative and any parent or subsidiary company, partner or joint venture partner, has no commercial, or other, interests which might conflict with or influence its advice to the Council and warrants that it is not disbarred in any way from working on the Assignment.
- 2.3 Subject to 2.1 and 2.2 above the Council hereby engages and the Consultant and/or the Consultant's Representative hereby accepts such engagement to serve the Council as a consultant.

3 TERM

Notwithstanding the date hereof the Consultant and/or the Consultant's Representative shall commence work on _____ and shall complete the Assignment by ***(insert date)**, or such other date as shall be agreed by the parties.

4 CONDITIONS OF ENGAGEMENT

- 4.1 The Consultant shall carry out the Assignment subject to and in accordance with the following (hereinafter collectively referred to as "the Conditions of Engagement"):-
 - 4.1.1 The Council's Contract Procedures and Financial Regulations.
 - 4.1.2 The Council's Brief / letter* to the Consultant annexed hereto.
 - 4.1.3 The Consultant's Proposal
- 4.2 The Consultant and/or the Consultant's Representative shall report to and liaise directly with the Council's Representative.
- 4.3 The Consultant and/or the Consultant's Representative in addition to and in respect of carrying out the Assignment shall do and perform all matters and things which are usually done and performed by people/officers/staff providing those services according to the practice of their relevant professions including the giving of regular reports and advice to the Council during the Assignment and attendance before the Committees/Panels of the Council if and when required.
- 4.4 The Consultant and/or the Consultant's Representative shall while this Agreement is in force or until the completion of the Assignment, unless prevented by ill health, ensure that the Consultant's Representative, and any of his/her colleagues as are engaged in the assignment devote such of their time attention and abilities to the Assignment as may be necessary for the completion thereof to the Council's satisfaction.
- 4.5 The Consultant and/or the Consultant's Representative agrees to:-

- 4.5.1 advise and assist the Council with respect to all aspects of the Assignment and in that context to comply with all reasonable requests and directions of the Council;
- 4.5.2 complete daily time sheets accurately recording work duration and activities; and
- 4.5.3 use all reasonable endeavours to comply with all local or internal policies and regulations operated by or affecting the Council.
- 4.5.4 when carrying out the Assignment exercise reasonable skill and care in conformity with the highest standards of the Consultant's profession.

5 FEES

Fees shall be paid by the Council to the Consultant in respect of the Assignment as specified in the Proposal/ Schedule (*see copy at back of schedule*).

6 EXPENSES

The Council shall only reimburse expenses to the Consultant, at cost, which are properly and reasonably incurred directly in the performance of the Assignment and are either identified in the Proposal or have been approved beforehand by the Council's Representative.

7 PAYMENT

Payment shall be made within 28 days from receipt of the Consultant's valid account on a monthly basis.

8 COPYRIGHT

- 8.1 The copyright in any Deliverables prepared by the Consultant pursuant to this Agreement shall be the property of the Council absolutely.
- 8.2 In particular but without prejudice to the foregoing if the Consultant ceases to act for any reason the Council may make full use of all or any materials or documents prepared by the Consultant pursuant to this Agreement.
- 8.3 The Council hereby grants to the Consultant a non-exclusive, royalty-free, world-wide, perpetual right to use, copy, adapt, modify, sub-licence and market the Deliverables, subject to the following confidentiality provisions.
- 8.4 The copyright and other intellectual property rights in any materials or software (whether written or machine-readable) created by or licensed to the Consultant prior to or outside this Agreement and any subsequent modifications to the same will remain vested in the Consultant (or its licensor) but to the extent that these form part of any of the Deliverables the Council is hereby granted a licence to use them in accordance with Clause 8.5 below.

- 8.5 The licence to the Council is a non-exclusive, non-transferable licence to use the materials and software referred to in Clause 8.4 above for its own internal use and only for the purposes for which they were delivered.

9 CONFIDENTIALITY

The Consultant and/or the Consultant's Representative shall not, without the prior written consent of the Council, during or after the termination or expiry of this Agreement disclose, directly or indirectly, to any person (including a person who is associated with or is part of the Consultant's organisation, but not engaged on the Assignment), firm, company, or third party, and shall only use for the purposes of this Agreement, any information relating to the Assignment, the Council, its business, customers, suppliers or any other information of whatever nature which is not in the public domain and which comes into the Consultant's possession in connection with this Agreement.

10 LIABILITY AND INSURANCE

- 10.1 The Consultant and/or the Consultant's Representative is engaged for its ability and expertise in the subject matter of the Assignment upon which the Council will rely. The Consultant shall be liable for any loss or damage suffered by the Council as a result of information negligently supplied by the Consultant and/or the Consultant's Representative.
- 10.2 Accordingly the Consultant and/or the Consultant's Representative undertakes to take out and maintain professional indemnity insurance cover with a reputable insurance company against such liability.
- 10.3 The Consultant shall indemnify and keep indemnified the Council from and against any action, costs, claims and proceedings in injury or damage to any property, real or personal, arising out of or in the course of carrying out this Agreement unless due to any act or neglect of the Council or its servants. Without thereby limiting its responsibilities under this Condition, the Consultant SHALL INSURE with a reputable insurance company against all loss of and damage to property and injury to, or death of, persons arising out of or in consequence of the Consultant's obligations under the Contract and against all actions, claims, demands, proceedings, damages, costs, charges and expenses in respect thereof.
- 10.4 For all matters to which this Clause 10 applies, the insurance cover shall be £2,000,000.00, or such greater sum as the Consultant may choose in respect of any one incident and the insurance policy providing such cover shall contain an indemnity to Principals clause, or shall otherwise expressly by its terms confer its benefits upon the Council. The Consultant shall exhibit to the Council forthwith upon demand satisfactory evidence that it has taken out such insurance.

11 DEFAULT

- 11.1 If the Consultant shall be guilty of any serious misconduct or any serious breach or non-observance of any of the conditions of this Agreement or shall neglect or fail or refuse to carry out the duties assigned to it hereunder the Council shall be entitled to terminate its engagement hereunder with

immediate effect by giving written notice to the Consultant, without prejudice to any rights or claims the Council may have against the Consultant arising out of such default.

11.2 If the Consultant:-

- 11.2.1 commits a breach of any of its obligations under the Contract;
- 11.2.2 makes a composition or arrangement with its creditors, or has a proposal in respect of the company for the voluntary arrangements for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986;
- 11.2.3 has an application made under the Insolvency Act 1986 in respect of the company to the Court for the appointment of an administrative receiver;
- 11.2.4 has a winding-up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
- 11.2.5 has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;
- 11.2.6 has an administrative receiver, as defined in the Insolvency Act 1986, appointed;
- 11.2.7 has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge;
- 11.2.8 is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver, or which entitle the Court to make a winding-up order;
- 11.2.9 shall have offered, or given, or agreed to give any person any gift, or consideration of any kind as an inducement or reward for doing, or forbearing to do, or having done or forborne to do any action in relation to the obtaining of the Contract, or any other Contract with the Council, or for showing or forbearing to show favour, or disfavour, to any person in relation to the Contract, or any other Contract with the Council, or if the like acts shall have been done by any person employed by the Consultant, or acting on the Consultant's behalf (whether with or without the knowledge of the Consultant), or if in relation to the Contract, or any other contract with the Council, the Consultant or any person employed by the Consultant, or acting on the Consultant's behalf, shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward to any officer of the Council, which shall have been exacted or accepted by such officer by virtue of his/her office or employment and is otherwise than such officer's proper remuneration, then in any such circumstances the Council may without prejudice to any accrued rights or remedies under the

Contract, terminate the Consultant's employment under the Contract by notice in writing either with immediate effect or on such date as specified in the notice.

12 TERMINATION

- 12.1 The Agreement may be terminated by either party on written notice with immediate effect if the other commits a material breach of any term of this Agreement which is not remedied within 21 days of a written request to remedy the same.
- 12.2 This Agreement may be terminated by either party by giving three (3) months written notice to the other.
- 12.3 Upon termination of this Agreement or the Consultant's engagement whichever shall be the earlier the Consultant and/or the Consultant's Representative, as the case may be, shall immediately deliver up to the Council all correspondence reports, documents, specifications, papers, information (on whatever media) and property belonging to the Council which may be in its possession or under its control.

13 ENTICEMENT

The Consultant undertakes that it shall not without the Council's prior written consent either during or within six months after completion of the Assignment or termination of this Agreement whichever is the later engage employ or otherwise solicit for employment any person who during the relevant period was an employee of the Council or the Council's customer as the case may be.

14 UNDERTAKINGS BY THE CONSULTANT

- 14.1 The Consultant shall not whether as principal, employee, consultant, contractor, or otherwise:-
 - 14.1.1 During the term of this Agreement directly or indirectly either for itself or on behalf of any other person firm or company advise or undertake any work or enter into employment or consultancy with anyone where the work to be done is in conflict or competition with any work undertaken by the Consultant for the Council.
 - 14.1.2 During this Agreement and for a period of six months after completion of the Assignment, directly or indirectly, either for itself or for any other person firm or company, solicit the business of any person, firm, company or otherwise who is or was a customer, supplier or agent of the Council and which the Consultant has come to be aware of as a result of entering into this Agreement, if such business would in the view of the Council be detrimental to the Council. For the avoidance of doubt this Clause 14.1.2 shall not apply to any pre-existing Clients of the Consultant who may also be a customer, supplier or agent of the Council.

15 ASSIGNMENT

15.1 The Consultant shall not without the prior written consent of the Council:-

15.1.1 Dispense with the services of, or replace, the Consultant's Representative.

15.1.2 Transfer or assign the whole or any part of this Agreement.

15.2 None of the services described in the Proposal hereto shall be sub-contracted without the prior written consent of the Council.

16 FORCE MAJEURE

Neither Party will be liable to the other for any failure to fulfil its obligations caused by circumstances outside its reasonable control.

17 WAIVER

No delay by either Party in enforcing any of the terms or conditions of this Agreement will affect or restrict our own rights and powers arising under the Agreement. No waiver of any term or condition of this Agreement will be effective unless made in writing.

18 NOTICES

Notices must be served either personally, sent by pre-paid registered post or faxed to the address of the other Party given in this Agreement or to any other address as the Parties may have notified during the period of the Agreement. Any notice sent by post will be deemed to have been delivered on the first working day following its dispatch.

19 SURVIVAL

The provisions of this Agreement which expressly or by implication are intended to survive its termination or expiry will survive and continue to bind both Parties.

20 VALIDITY OF AGREEMENT PROVISIONS

If any provision of this Agreement is held to be invalid, in whole or in part, such provision shall be deemed not to form part of the Agreement. In any event the enforceability of the remainder of the Agreement will not be affected.

21 RESOLVING DISPUTES

Should any dispute arise between them the Parties will attempt to resolve the dispute in good faith by senior level negotiations. Where both Parties agree that it may be beneficial they will seek to resolve the dispute through mediation using the services of the Centre for Dispute Resolution to facilitate the mediation process. If the dispute is not resolved through negotiation or mediation both Parties agree that the English Courts will have exclusive jurisdiction in connection with the resolution of the dispute.

22 STATUS OF CONSULTANT

- 22.1 The termination determination or expiration of this Agreement by effluxion of time shall not constitute unfair dismissal nor shall the Consultant be entitled to the payment of any compensation redundancy payments or otherwise upon the occurrence of the same
- 22.2 For the avoidance of doubt neither the Consultant nor the Consultant's Representative are an employee of the Council.

23 THIRD PARTY RIGHTS

Unless expressly provided in this Contract the parties hereto do not intend any provisions hereof to be enforceable by any third party under the provisions of The Contract (Rights of Third Parties) Act 1999 and as such no person other than the said parties shall have any rights under this Contract nor shall it be enforceable by them.

IN WITNESS whereof the Parties agree to be bound by this Agreement the day and year first written above

Summary Schedule:

THE CONTRACTOR :

ADDRESS :

BANK DETAILS (for mandatory
payment by BACS):

Name of Bank :

Address of Branch :

Bank sort code :

Account Name :

Account Number :

SPECIFICATION OF WORK :

CLIENT'S
REPRESENTATIVE/CONTACT:
Name :

Telephone number :

NORMAL DAYS PER WEEK :

NORMAL HOURS PER WEEK :

MAXIMUM HOURS PER WEEK :

HOURLY RATE :

INVOICING FREQUENCY :

CONTRACT PERIOD:

Commencement date :

Duration :

Anticipated End Date :

EXPENSES :

MINIMUM NOTICE :

**SIGNED for and on behalf of
CENTRAL BEDFORDSHIRE COUNCIL
by**

Authorised Signatory

SIGNED for and on behalf of

(the Consultant)

Name: