



1.3 HEHOC wishes to appoint the Consultant and the Consultant has agreed to accept such appointment upon and subject to the terms in this Agreement

## 2. DEFINITIONS

2.1 The following terms shall have the following meanings for the purposes of this Agreement

Commencement Date means 16 June 2014

Conditions means the provisions contained in Clauses 3 to 20 and as set out in the Contract Documents

Confidential Information means all information relating to this Agreement and personal data and sensitive personal information as defined by the Data Protection Act 1998

'Contract Administrator' means Angela Williams for Brentwood District Council, Andrew Wilkes for Broxbourne District Council, Peter McDonagh for Chelmsford City Council, Sean Corcoran for East Herts District Council, Roger Wilson for Epping Forest District Council and Judith Snares for Uttlesford District Council as the lead representative for this Contract or such representative as appointed by the appropriate individual HEHOC Member from time to time

'CFP' means the Consultant's Fee Proposal

'Contract Standard' means the standard that complies with the performance targets and other provisions of the CFP and to the extent that no criteria are stated in the CFP to the reasonable satisfaction of the appropriate individual HEHOC Contract Administrator and in any event in compliance with the requirements of best value under Part 1 of the Local Government Act 1999

'Documents'	means any documents produced by the Consultant for the purposes of this Agreement
'HEHOC'	means all of the first 6 named Parties to this Agreement or any of them individually as the context so permits
Laws	any applicable statute or any delegated or subordinate legislation, any enforceable community rights within the meaning of Section 2 of the European Communities Act 1972, duly applicable guidance, code of practice, direction, judgement or determination with which HEHOC and/or the Consultant is bound to comply
'Term'	means from the Commencement Date until 15 August 2014
'the Lead Consultant'	means Neil Thody
The Services	means the works and services listed in the CFP

### **3. APPOINTMENT**

3.1 HEHOC appoints the Consultant to perform the services as outlined in the CFP for undertaking an options appraisal and other associated work set out in the CFP for the procurement of a choice based lettings system from the Consultant for the Term in return for payment in accordance with Clause 6.

3.2 The Consultant will appoint the Lead Consultant(s) to carry out the Services in person and will not delegate the Services to another employee or agent of the Consultant without the written consent of HEHOC.

### **4. CONSULTANT'S OBLIGATIONS**

#### **4.1 Provision of Services**

The Consultant shall provide the Services at the times specified in the CFP

for undertaking an options appraisal for the procurement of a choice based lettings system from the Consultant.

## **4.2 Skill and Care**

4.2.1 In providing the Services to the Contract Standard the Consultant shall use reasonable skill and care to be expected of an appropriately qualified and competent Consultant.

4.2.2 In providing the Services the Consultant the Lead Consultant and all persons employed to provide the Services who have access to Confidential Information which is processed for and on behalf of HEHOC shall be fully trained and aware of their duties and responsibilities under the Data Protection Act 1998.

## **4.3 Directions of the HEHOC**

The Consultant will at all times comply with the reasonable directions of HEHOC and use its reasonable endeavours to promote the interest of HEHOC.

## **4.4 Delegation**

The Consultant shall not delegate any duties or obligations arising under this Agreement otherwise than may be expressly permitted under its terms.

## **4.5 Indemnity**

The Consultant shall be liable for and shall indemnify the Member of HEHOC and HEHOC in respect of all damage loss or injury which the Member of HEHOC may suffer as a result of any act neglect or default of the Consultant its employees or agents or any failure by the Consultant to perform the Services in accordance with the terms of this Agreement

## **4.6 Insurance**

4.6.1 Without prejudice to its liability to indemnify the appropriate individual HEHOC Member as at Clause 4.5 the Consultant shall maintain with an insurance company approved by HEHOC:

- 4.6.1.1 Professional Indemnity Insurance to a value not less than £2 million for any one occurrence or series of occurrences arising out of this Agreement provided that it is available at commercially reasonable rates in force for a period of 7 years from the date of completion of the Services
- 4.6.1.2 Employers Liability Insurance to a value not less than £10 million; and
- 4.6.1.3 Public Liability Insurance to a value not less than £10 million
- 4.6.2 If for any period professional indemnity insurance is not available on commercially reasonable terms, the Consultant shall forthwith inform HEHOC by notice, and shall obtain in respect of such period such reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for the Consultant to obtain
- 4.6.3 The Consultant shall within seven working days of HEHOC's request provide HEHOC with evidence that such insurances are being maintained at its own expense

#### **4.7 Notice**

To comply with the terms of any default notice served in accordance with Clause 9.2

#### **4.8 Lead Consultant**

All Services shall be performed by the Lead Consultant unless HEHOC has agreed otherwise in writing

### **5. HEHOC'S OBLIGATIONS**

- 5.1 HEHOC shall as soon as reasonably practicable give notice to the Consultant and the other HEHOC Members of the appointment or replacement of any Contract Administrator or if any person ceases to be the Contract Administrator

**5.2** HEHOC shall pay the Consideration for the Services in accordance with Clause 6

## **6. CONSIDERATION**

In consideration of the Services rendered by the Consultant under this Agreement HEHOC agrees:

6.1 To pay to the Consultant the total sum of £7,600.00 inclusive of all disbursements but not of VAT.

6.2 The above sum shall be equally divided amongst the Members of HEHOC and each Member of HEHOC shall pay to the Consultant the sum of £1,266.67 plus VAT direct upon receipt of a separate invoice from the Consultant.

6.3 The Consultant shall not hold liable one Member of HEHOC for the default or non payment of an invoice by another Member of HEHOC.

6.4 All amounts payable under this Agreement shall be exclusive of value added tax which shall be paid at the rate and in the manner as prescribed by law.

6.5 HEHOC Members will pay all monies due under this Agreement within 30 days of the receipt of a valid VAT invoice.

6.6 Any sums due and remaining unpaid at the expiry of 30 days after the date of issue of a valid VAT invoice in respect of a sum properly due shall bear interest at 8% over Bank of England Base Rate current at the date of issue of the invoice.

## **7. CONFIDENTIALITY**

7.1 Save as may be necessary in the performance of the Services under this Agreement or as HEHOC may allow in writing the Consultant agrees and undertakes to treat as confidential the Confidential Information and use it only for the purposes of the provision of the Services and for no other purpose and shall take all reasonable steps to see that its employees and the Lead Consultant do likewise.

7.2 The Consultant shall, and shall procure that the Lead Consultant its employees representatives and advisers comply with the requirements of HEHOC's Corporate Policy – Data Protection current for the time being.

## **8. STATUS OF THE CONSULTANT**

8.1 During this Agreement, the Consultant shall be an independent Consultant and not an agent or employee of HEHOC.

8.2 Nothing in this Agreement shall be deemed to create a partnership or agency relationship between the Consultant and HEHOC or between Members of HEHOC or be deemed to authorise any party to incur liabilities or obligations on behalf of or in the name of the another.

## **9. DEFAULT**

9.1 If for any reason the Consultant is unable to comply with any of its obligations under this Agreement it shall immediately notify HEHOC in writing of its failure and the reasons for it. Compliance with this clause shall not prejudice HEHOC's rights under this Clause and Clause 10

9.2 In the event that the Consultant is in breach of its obligations under this Agreement, (including any breach of which the Consultant may have given notice under Clause 9.1 of this Agreement) without prejudice to HEHOC's rights to immediately terminate this Agreement, HEHOC may issue the Consultant with a default notice detailing the breach and requiring the Consultant to remedy the breach upon the terms and within the times stipulated in the default notice.

## **10. TERMINATION FOR BREACH**

The following obligations are conditions of this Agreement and any breach of them shall be deemed a fundamental breach which shall determine this Agreement immediately:

10.1 Failure to comply with the terms of a default notice within the times stipulated in the default notice

- 10.2 If the Consultant goes into liquidation whether compulsory or voluntary (save for a voluntary liquidation of a solvent company for the purposes of amalgamation or reconstruction of a solvent company or suffers the appointment of a receiver or enters into administration or enters into any arrangement with its creditors
- 10.3 The occurrence of an event described in Clause 11

## **11. BRIBERY ACT**

HEHOC shall be entitled to terminate this Agreement forthwith and recover from the Consultant the amount of any loss resulting in such cancellation if the Consultant its servants or agents with or without its knowledge has:

- 11.1 Offered given or agreed to give any person financial or other advantage of any kind as an inducement or reward for doing or not doing anything in relation to the obtaining or carrying out of this Agreement or any other agreement with HEHOC or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with HEHOC; or
- 11.2 Committed any offence under the Bribery Act 2010 or given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

## **12. TERMINATION CONSEQUENCES**

- 12.1 In the event of this Agreement being determined whether by effluxion of time, notice of breach or otherwise:
- 12.1.1 Each party shall return to the other all property in their possession belonging to the other party
- 12.1.2 At the request of HEHOC the Consultant shall promptly:
- Destroy or return to HEHOC all Confidential Information and copies thereof (irrespective of the manner in which they are recorded).



- Erase or delete any Confidential Information which the Consultant may have entered into any computer database or other programme, and
- Certify in writing to HEHOC that it has complied with the requirements of this Clause 12.1.2, provided that the Consultant may retain documents and materials containing, reflecting, incorporating or based on the Confidential Information to the extent required by law or regulatory order, and to the extent reasonable to permit the Consultant to keep evidence that it has performed its obligations under this Agreement.

12.1.3 HEHOC shall pay to the Consultant the fees and expenses due and owing to the Consultant up to the date of termination after taking into account all monies due to HEHOC in accordance with 12.1.4

12.1.4 Where termination results under Clauses 10.1, 10.2, 10.3, or 11 of this Agreement HEHOC shall be entitled to obtain the remainder of the Services from a third party and to the extent that the cost exceeds the Consideration payable hereunder HEHOC shall be entitled to recoup the excess from the Consultant together with any other costs incurred as a direct consequence of termination

12.2 Termination of this Agreement shall not prejudice or affect any right of action or remedy which shall accrue or shall thereafter accrue to either party and that the provisions of this Clause 12 shall remain in force.

### **13. COPYRIGHT**

13.1 The Consultant hereby grants to HEHOC and each Member of HEHOC an unconditional and royalty-free as well as an irrevocable, non-exclusive licence in respect of the Documents. HEHOC shall be entitled to use and to reproduce any of the Documents for any purpose whatsoever connected with the Services, including, advertisement, letting, sale, and extension of the Services. HEHOC shall be entitled to grant sub-licences in the terms of this Agreement.

- 13.2 The Consultant warrants that the use of the Documents for the purposes of the Services will not infringe the rights of any third party.
- 13.3 After the termination or conclusion of the Consultant's employment under this Agreement, the Consultant shall supply HEHOC with copies and/or computer disks or memory sticks of such of the Documents as HEHOC may from time to time request, and HEHOC shall pay the Consultant's reasonable costs of producing such copies and/or disks or memory sticks.

#### **14. ACCESS FOR AUDIT PURPOSES**

- 14.1 The Consultant shall assist representatives of HEHOC or Members of HEHOC with any audit process or investigation by allowing them unrestricted access to any records provided reasonable notice is served e.g. documentation, files, statements, literature data or any other similar material, in whatever form relating to the carrying out of the Services, including access to any premises in which such material is stored, processed or otherwise kept. Such representative shall also be entitled to take copies of any and all documentation and to access and copy computer data.
- 14.2 The Consultant shall allow HEHOC's representatives to take statements from any member of the Consultant's staff at times within working hours in connection with an audit process or investigation. Such staff should be instructed by the Consultant to co-operate fully with such audit process or investigation pertaining to the Services.

#### **15. SETTLEMENT OF DISPUTES**

- 15.1 If any dispute or difference shall arise between the parties as to the construction of this Agreement or any matter or thing of whatever nature arising under this Agreement or in connection with it then the parties shall use their best endeavours to settle the dispute between themselves
- 15.2 If the dispute is not resolved to the satisfaction of both parties the same shall be referred to a single arbitrator to be agreed between the parties and failing such agreement within 14 days of the request of one party to the other in writing that the matter be referred to arbitration. Such reference shall be to a single arbitrator appointed for that purpose on the written request of either party. The cost of the

arbitration will be borne by the parties as directed by the arbitrator. Any reference to 'arbitration' under this clause shall be deemed to be a reference to arbitration within the meaning of the Arbitration Act 1996

**16. THIRD PARTIES**

16.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not intended to, and does not, give any person who is not a party to it any right to the enforcement of its provisions

**17. DISCLOSURE OF AND REQUESTS FOR INFORMATION UNDER THE DATA PROTECTION ACT 1998 AND FREEDOM OF INFORMATION ACT 2000**

17.1 Notwithstanding anything to the contrary contained or implied in any documents or negotiations leading to this Agreement:

17.1.1 HEHOC shall be entitled to publish and/or release any and all terms or conditions of this Agreement, the contents of any documents and/or information relating to the formation of this Agreement under the provisions of the Freedom of Information Act 2000 and/or Data Protection Act 1998 as it sees fit unless such information is exempt from such disclosure and/or publication under the provisions of the Data Protection Act 1998 and/or Freedom of Information Act 2000 and/or the Transparency Directive (2004/109/EC)

17.1.2 nothing contained in this Agreement shall prevent HEHOC from disclosing and/or publishing under the provisions of the Data Protection Act 1998 and/or Freedom of Information Act 2000 any term or condition or information contained in or relating to the formation of this Agreement unless such information is exempt from such disclosure and/or publication under the provisions of the Data Protection Act 1998 and/or Freedom of Information Act 2000

17.2 The Consultant shall:

17.2.1 co-operate with HEHOC and supply to it all necessary information and documentation required in connection with any request received by

HEHOC under the Data Protection Act 1998 and/or Freedom of Information Act 2000

17.2.2 supply all such information and documentation at no cost to HEHOC and within seven days of receipt of any request.

17.3 The Consultant shall not publish or otherwise disclose any information contained in this Agreement or in any negotiations leading to it without HEHOC's previous written consent unless the Consultant is bound to publish and/or disclose such information under the Data Protection Act 1998 and/or Freedom of Information Act 2000 and such information is not exempt from such disclosure and/or publication under the provisions of the Data Protection Act 1998 and/or Freedom of Information Act 2000.

## **18. HEALTH AND SAFETY**

18.1 The Consultant shall ensure that its employees and agents shall in the course of this Agreement comply with the Health and Safety at Work etc. Act 1974 (HSWA), which term shall include all regulations, orders, and any other supplemental legislation, circulars or guidance made or issued pursuant thereto and any statutory modification or re-enactment thereof together with any code of guidance prepared by HEHOC and supplied to the Consultant either before or during this Agreement and that all persons who are at work, (as defined in that Act), in connection with this Agreement shall comply at all times with HSWA

## **19. EQUAL OPPORTUNITIES**

19.1 In all its activities carried out pursuant to this Agreement the Consultant shall comply and ensure that its agents and employees comply with:

- (i) the Human Rights Act 1998 as if the Consultant were a public body (as defined in the Human Rights Act)

- (ii) all Laws relating to equal opportunity including but without limitation to discrimination on the basis of age disability sex and sexual orientation, gender re-assignment, marriage, pregnancy and maternity, race religion or belief and
- (iii) HEHOC's equal opportunities policies and procedures as may be adopted and amended from time to time as notified to the Consultant

**20. MISCELLANEOUS**

**20.1 Warranty**

Each of the parties warrants its power to enter into this Agreement

**20.2 Receipt**

The receipt of money by either of the parties shall not prevent either from questioning the correctness of any statement in respect of such money

**20.3 Force Majeure**

20.3.1 Neither party shall be liable to the other for any delay or non performance of its obligations under this Agreement arising from any cause or causes beyond its reasonable control including, without limitation, any of the following: Act of God, government act, war, fire, flood, explosion or civil commotion

20.3.2 In the event of either party being so delayed or prevented from performing its obligation such party shall give notice in writing of delay or prevention to the other party as soon as reasonably possible stating the date and extent of such delay or prevention and the cause thereof and each party shall use its reasonable endeavours promptly to meet with the other party and discuss and (if necessary) negotiate terms under which the Consultant shall continue in a varied form and adjustments be made to the provisions of this Agreement accordingly. The party whose performance has been so delayed or prevented shall resume performance of its obligations, as soon as reasonably possible after the

removal of this cause and shall notify the other party. In the event that such cause continues for more than one week either party may terminate this Agreement immediately on written notice to the other party

#### **20.4 Severance**

If any part of this Agreement is found by a court of competent jurisdiction to be invalid, unlawful or unenforceable then such part will be severed from the remainder of this Agreement which will continue to be valid and enforceable to the fullest extent permitted by law

#### **20.5 Whole Contract**

This Agreement contains the whole agreement between the parties relating to the subject matter of this Agreement and shall supersede all previous agreements between the parties relating to that subject matter

#### **20.6 Discretion**

Any exercise of discretion judgement or opinion or approval of any matter mentioned in this Agreement or arising from it shall be binding on a party only if in writing and shall be at its sole discretion unless otherwise expressly provided for in this Agreement

#### **20.7 Notices**

20.7.1 Any notice or other document to be served under this Agreement may be delivered or sent by prepaid first class recorded delivery or registered post to the party to be served, at the address of that party identified at the head of this Agreement or at any other address as either party may have notified to the other and shall be deemed to have been received by the addressee within 72 hours of posting. Any notice or document served on the appropriate individual HEHOC should be addressed to the Chief Executive and sent to the appropriate individual address at the head of this Agreement

20.7.2 In proving service of a notice or document it shall be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class recorded delivery or registered letter

## **20.8 Headings**

Headings contained in this Agreement are for reference purposes only and should not be incorporated into this Agreement and shall not be deemed to be any indication as to the meaning of the Clauses to which they relate

## **20.9 Rights Cumulative**

All rights granted to either of the parties shall be cumulative and no exercise by any of the parties of any right under this Agreement shall restrict or prejudice the exercise of any other right granted by this Agreement or otherwise available to it

## **20.10 Waiver**

Failure by HEHOC at any time to enforce the provisions of this Agreement or to require performance by the Consultant of the provisions of this Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of this Agreement or any part of it or the rights of HEHOC to enforce any provisions in accordance with this Agreement

## **20.11 Assignment and Transfer of Contract**

The Consultant may not delegate assign sub-licence transfer or otherwise dispose of any of its rights or sub-contract transfer or otherwise dispose of any of its obligations under this Agreement without the prior written consent of HEHOC

## **20.12 General**

20.12.1 Each party to this Agreement irrevocably agrees that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in any way relate to this Agreement or its formation and, for these

purposes, each party irrevocably submits to the jurisdiction of the courts of England

20.12.2 This Agreement may be executed in two or more counterparts each of which shall constitute an original but which when taken together shall constitute one instrument

20.12.3 The parties hereby acknowledge that they have had an opportunity to take independent legal advice before signing this Agreement

20.12.4 The parties acknowledge that their relationship is governed by this agreement as a legally binding Agreement

20.12.5 The Consultant as an independent is responsible for its own corporation or other tax

**IN WITNESS** whereof the Parties have executed this Agreement as a Deed and delivered it the day and year first before written

**THE COMMON SEAL OF** )  
**BRENTWOOD BOROUGH COUNCIL** )  
**was hereunto affixed** )  
**in the presence of:** )

**Attesting Officer**

**THE COMMON SEAL OF** )  
**BROXBOURNE BOROUGH COUNCIL** )  
**was hereunto affixed** )  
**in the presence of:** )

**Attesting Officer**

**THE COMMON SEAL OF** )  
**CHELMSFORD CITY COUNCIL** )  
**was hereunto affixed** )  
**in the presence of:** )



**Mayor**

**Principal Solicitor**

THE COMMON SEAL OF )  
EAST HERTS DISTRICT COUNCIL )  
was hereunto affixed )  
in the presence of: )

**Attesting Officer**

THE COMMON SEAL OF )  
EPPING FOREST DISTRICT COUNCIL )  
was hereunto affixed )  
in the presence of: )

**Attesting Officer**

THE COMMON SEAL OF )  
UTTLESFORD DISTRICT COUNCIL )  
was hereunto affixed )  
in the presence of: )

**Attesting Officer**

THE COMMON SEAL OF )  
CAMERON CONSULTING (UK) LIMITED )  
was hereunto affixed )  
in the presence of: )

**Director**

**Director/Secretary**

**Executed as a Deed )  
by the above named )  
CAMERON CONSULTING (UK) LIMITED )  
and signed by a Director and the )  
Secretary (or) two Directors )**

**Director**

**Director/Secretary**

**SIGNED by the )  
above named )  
in the presence of: )**

**Witness:**

**Signature:**

**Print Name:**

**Address:**

**Occupation:**

DATED

2014

**BRENTWOOD BOROUGH COUNCIL**  
**and**  
**BROXBOURNE BOROUGH COUNCIL**  
**and**  
**CHELMSFORD CITY COUNCIL**  
**and**  
**EAST HERTS DISTRICT COUNCIL**  
**and**  
**EPPING FOREST DISTRICT COUNCIL**  
**and**  
**UTTLESFORD DISTRICT COUNCIL**  
**and**  
**CAMERON CONSULTING (UK) LIMITED**

---

**A G R E E M E N T**

**Appointment of Consultant to undertake Option  
Appraisal on Procurement of a Choice Based  
Lettings System**

---

DG/FS/MPL/214/1/3048

**C O'Boyle**  
**Director of Governance/**  
**Solicitor to the Council**  
**Epping Forest District Council**  
**Civic Offices**  
**High Street**  
**Epping**  
**Essex**  
**CM16 4BZ**