



BRACKNELL FOREST BOROUGH COUNCIL

CONSULTANCY CONDITIONS

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CONSULTANCY CONDITIONS

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THIS CONTRACT is made the _____ day of _____ 2011
BETWEEN BRACKNELL FOREST BOROUGH COUNCIL of Easthampstead
House Town Square Bracknell Berkshire (hereinafter referred to as “the Council”)
of the one part and [_____] whose registered
office is situate at [_____] (hereinafter referred
to as “the Consultants”) of the other part

WHEREAS:-

- (1) The Consultants have agreed to provide certain services to the Council as detailed in this Contract

NOW IT IS AGREED AS FOLLOWS:-

1. Definitions

1.1 In this Contract the following words shall have the following meanings assigned to them:-

“Commencement Date” means the date of commencement of this Contract which shall be [_____]

“Confidential Information” means the Council’s secrets or confidential information and extends to all knowledge and information relating to the Council’s business organisation finances processes specifications clients services and technology

“the Consultants Response” means the Consultants Response to the Invitation to Tender dated [_____]

“Contract” means the agreement between The Council and the Consultants, for the supply of the Services, comprising the Specification and the terms of this Contract and any other written requirements or particulars of the Council

“the Employee” means the following employees of the Consultant [_____]

“Exempted Information” means any information or category of information, document, report, contract or other material containing information relevant to this Contract that has been designated by the mutual agreement of the Parties as potentially falling within an FOIA Exemption and listed from time to time as such in Schedule 2

“FOIA” means the Freedom of Information Act 2000

“FOIA Exemption” means any applicable exemption to the FOIA including, but not limited to, confidentiality (section 41 FOIA), trade secrets (section 43 FOIA) and prejudice to commercial interests (section 43 FOIA)

“Invitation to Tender” means the Invitation to Tender of the Council dated [_____]

“IP”	means all intellectual property rights of whatsoever nature including (without limiting the generality of the foregoing) copyright (and rights in the nature of copyright), design rights, database rights, trade marks, patents and patentable inventions (and the right to apply for any of the foregoing)
“Prohibited Act”	means the following which constitute Prohibited Acts: <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract; (c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act 2010; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or (iv) defrauding, attempting to defraud or conspiring to defraud the Council.
“the Payment”	means the consideration for the Services which is detailed in clause 4.1 hereto
“the Services”	means the services to be provided by the Consultants to the Council in accordance with the Specification and the terms of this Contract
“the Specification”	means the specification included in the Council’s [Invitation to Tender as responded to in the Consultants Response / the Specification attached as Schedule 1 hereto]
“Term”	means the term of this Contract commencing on the Commencement Date and terminating upon [] unless extended in accordance with the provisions of this Contract
“VAT”	means value added tax payable under the Value Added Tax Act 1994

- 1.2 A reference to any Act Statute or statutory provision shall include a reference to that Act Statute or statutory provision as amended re-enacted or replaced from time to time whether before or after the date hereof and any former Act Statute or statutory provision replaced (with or without modification) by the Act Statute or statutory provision referred to and any subordinate legislation made thereunder respectively
- 1.3 References to the singular shall include the plural and vice versa, references to one gender shall include all genders. References to a “person” shall be construed so as to include any individual, firm, company or other body corporate, government, state or agency of the state, joint venture, association or partnership (wherever and however incorporated or established and whether or not being of separate legal personality)
- 1.4 References to a Clause, Sub-clause or Schedule are references to that Clause or Sub-clause of or Schedule to this Contract. Clause and Schedule headings are for convenience only and shall not affect the construction of this Contract

2. Term

- 2.1 This Contract shall commence on the Commencement Date and shall continue for the Term subject to the terms and conditions of this Contract
- 2.2 This Contract may be extended by the Council giving no less than [2 months] written notice to the Consultants before then end of the expiry of the initial Term. Such period of extension shall be at the discretion of the Council but shall in any event be for a period of no more than [one year] from the date of the expiry of the initial Term

3. The Services

- 3.1 The Services shall be provided by the Consultants to the Council in accordance with the Specification for the Term.
- 3.2 It is intended that the Services shall be provided by the Consultants in close consultation with the Council and accordingly the Council and the Consultants shall agree during the Term the manner and timing of the provision of the Services. The Consultants shall use their reasonable endeavours to provide the Services in the manner so directed
- 3.3 It is a condition of the Contract that the Services shall be provided in the manner indicated in the Consultants Response by the Employee and that any proposed replacement employee must be approved in writing in advance by the Council and the Council shall reserve the right to interview or review any Employee proposed by the Consultants prior to such approval.
- 3.4 The Consultants shall undertake not to remove or replace any Employee without the prior written consent of the Council (which shall not be unreasonably withheld).

4. Payment Provisions and Default Interest

- 4.1 In consideration of the provision of the Services the Council agrees to pay the Consultants [the sum of £ in accordance with the payment profile detailed in clause 4.2 below] [the sum of £ per day for each day of the provision of the Services by the Employee] excluding VAT (“the Payment”).

[No additional expenses will be payable of whatever nature or however incurred] [Only expenses approved in advance by the Council will be paid to the Consultants]

- 4.2 The Payments shall be paid in accordance with the [payment profile detailed in the Invitation to Tender] [following payment profile].
The Consultants shall render invoices in accordance with the payment profile detailed in this clause. Each invoice shall contain the following information relating to the Services to which the invoice relates:-
- 4.2.1 The details of the Service completed in accordance with the Specification
- 4.2.2 [Signed time sheets relating to the Services supplied during the period to which the invoice relates]
- 4.2.3 [Details of Employees who have provided that part of the Service invoiced and details of the number of hours spent by all Employees thereon]
- 4.3 All correct invoices will be paid by the Council within 30 days of receipt. [Payments will be made electronically and the Consultants shall provide appropriate banking details to the Council in order to achieve this]
- 4.4 If the Council fails to pay any amount payable by it under this Contract, the Consultants shall be entitled but not obliged to charge the Council interest on the overdue amount from the due date up to the date of actual payment at the rate of two percent above the base rate for the time being of Lloyds TSB Bank plc.
- 4.5 The Council reserves the right to withhold all or part of any payment due hereunder if the Council is not for any reason satisfied with the Services to which the payment relates

5. Liability of The Council

- 5.1 Nothing in this Contract shall exclude or restrict a Party's liability for death or personal injury caused by its negligence
- 5.2 The Council shall not be liable for any economic loss including loss of profit suffered by the Consultants and arising from any breach of the obligations of the Council in the Contract
- 5.3 The Council shall not be liable to the Consultants for any indirect consequential special or punitive losses or damages including without limitation damages for loss of profits opportunity data or use
- 5.4 All property of the Consultants shall be at the sole risk of the Consultants while on premises of the Council and the Council shall not be liable for any loss or damage to such property unless this results from the wilful act or default of the Council.
- 5.5 The Consultants shall indemnify the Council on demand against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement arising from provision of the Services by the Consultants of any third party's IP.

6. Notices

- 6.1 No notice served on the Council pursuant to this Contract shall be valid and effective unless it is sent by recorded delivery to the Council at the address above and marked for the attention of the []
- 6.2 No notice served on the Consultants shall be valid and effective unless it is sent by recorded delivery to the Consultants at the registered address detailed above
- 6.3 Any notice to be served shall be deemed to have been properly serviced upon proof of posting. A correctly addressed notice shall be deemed to have been served 48 hours after it was dispatched

7. Variations

- 7.1 Any variations to this Contract must be made in writing and signed by the duly authorised representatives of both parties.

8. Professional Expertise

- 8.1 It is a condition of this Contract that the Services to be provided shall be provided by a person of sufficient expertise and in accordance with the good working practices of the relevant profession

9. Assignment

- 9.1 The Consultants are prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever this Contract in whole or part and are prohibited from sub-letting this Contract without the prior written consent of the Council
- 9.2 The Council may assign this Contract in whole or part to a statutory or public body or any successor authority or authorities of the Council

10. Termination

- 10.1 The Council may terminate this Contract forthwith by notice in writing if the Consultants:-
- 10.1.1 shall become bankrupt or have a receiving order made against them or shall present their petition in bankruptcy or shall make an arrangement with or assignment in favour of their creditors or shall agree to carry out this Contract under the committee of inspection of their creditors or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or if the Consultants without the consent in writing of the Council first obtained or shall have an execution levied on their goods; or
- 10.1.2 have failed to comply with any terms of this Contract; or
- 10.1.3 are the subject of or cause the Council to be the subject of a penalty or reprimand imposed by any regulatory authority by which the Council is governed or to which its activities are subject; or
- 10.1.4 are in breach of any of the terms of this Contract unless in the case of a breach capable of remedy the breach is remedied by the

