

Terms and Conditions for the Supply of Consultancy Services to the Council under a Purchase Order

1. Entire Agreement

- 1.1 These Terms and Conditions apply to the relevant Purchase Order (**PO**) (together the **Contract**) which is placed by Buckinghamshire Council (the **Council**) with the individual, firm or company (the **Consultant**) named in the PO for the provision of the consultancy services described in it (the **Services**).
- 1.2 This Contract comprises the entire agreement between the Council and the Consultant in relation to the Services and no terms or conditions in, or attached to, any catalogue, invoice or other sales literature or document or tender or dispatch/delivery note of the Consultant which are inconsistent with the Contract, or which purport to add to or vary them in any way, shall have any effect and are hereby expressly excluded from the Contract.
- 1.3 The acceptance of any Services shall not constitute, or be deemed to constitute, acceptance by the Council of the Consultant's terms or conditions.

2. Commencement and Duration

- 2.1 The Contract shall commence and the Consultant will be contractually bound by this Contract upon dispatch of the PO to the Consultant.
- 2.2 The Contract shall remain in full force and effect until the date for completion of the Services specified in the PO, or the date on which it is terminated in accordance with the terms of the Contract, whichever is the sooner.

3. Price and Payment

- 3.1 The price to be paid for the Services shall be the price (exclusive of VAT) set out in the PO which shall be a fixed price unless otherwise agreed in writing by the Council.
- 3.2 Invoices from the Consultant for the Services shall:
 - 3.2.1 contain sufficient detail to enable payment to be made by the Council;
 - 3.2.2 be valid for VAT purposes;
 - 3.2.3 bear the relevant PO number; and
 - 3.2.4 be addressed to idinvoices@buckinghamshire.gov.uk.
- 3.3 The Council shall make payment to the Consultant for the Services within thirty (30) days of receipt of a valid invoice from the Consultant.

3.4 The Council may set off against any sums due to the Consultant, whether under this Contract or otherwise, any lawful set off or counterclaim to which the Council may be entitled at any time.

4. Supply of the Consultancy Services

4.1 The Consultant shall, from the date set out in the PO, and for the duration of this Contract, provide the Services to the Council in accordance with the terms of this Contract.

4.2 The Consultant shall meet any performance dates for the Services specified in the PO, or notified to the Consultant in writing by the Council, and in respect of such dates, time shall be of the essence.

4.3 In providing the Services, the Consultant shall:

4.3.1 co-operate with the Council in all matters relating to the Services, and comply with all instructions of the Council;

4.3.2 perform the Services with the best care, skill, and diligence, in accordance with best practice in the Consultant's industry, profession or trade;

4.3.3 use personnel who are suitably skilled, qualified and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Consultant's obligations are fulfilled in accordance with this Contract;

4.3.4 use the best quality goods, materials, standards and techniques;

4.3.5 obtain, and at all times maintain, all necessary licences and consents relevant to the performance of the Services, and comply with all applicable laws and regulations; and

4.3.6 observe all health and safety rules and regulations and any other security requirements that apply at any of the Council's premises.

5. Council's Remedies

5.1 If the Consultant fails to perform the Services by the applicable date, the Council shall, without limiting its other rights or remedies, have one or more of the following rights:

5.1.1 to terminate the Contract with immediate effect by giving written notice to the Consultant;

5.1.2 to refuse to accept any subsequent performance of the Services which the Consultant attempts to make;

5.1.3 to recover from the Consultant any costs incurred by the Council in obtaining substitute Services from a third party;

5.1.4 where the Council has paid in advance for Services that have not been provided by the Consultant, to have such sums refunded by the Consultant; and/or

5.1.5 to claim damages for any additional costs, losses or expenses incurred by the Council which are in any way attributable to the Consultant's failure to meet such dates.

5.3 This Contract shall extend to any replacement Services supplied by the Consultant.

5.4 The Council's rights under this Contract are in addition to, and not instead of or in substitution for, its rights and remedies implied by statute and common law.

6. Intellectual Property

6.1 The Consultant shall not, in connection with the Contract, use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of the intellectual property rights of any third party.

6.2 The Consultant hereby assigns to the Council all existing and future intellectual property rights in the Services, and any and all materials embodying such rights, to the fullest extent permitted by law.

6.3 Insofar as the intellectual property rights referred to in clause 6.2 above do not vest in the Council automatically by operation of law, or under this Contract, the Consultant shall hold title in such rights and inventions on trust for the Council and shall take all steps necessary to affect the transfer of such rights to the Council at the Consultant's cost.

6.4 The Consultant shall indemnify the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses which the Council may sustain, incur or be put to by reason or in consequence, directly or indirectly, of any breach of this provision (whether wilful or inadvertent), and against the payment of any royalties or other monies which the Council may have to make to any person or body entitled to intellectual property rights in respect of any process, matter, or thing used, manufactured, supplied or delivered by the Consultant in connection with the Contract.

7. Insurance

7.1 The Consultant shall, unless the Council agrees otherwise in writing, take out and maintain employer's liability insurance as required by law, and public liability insurance in the sum of not less than five million pounds (£5,000,000.00) in respect of each and every claim in each case, and without limit to the number of claims, and shall

make available copies of any insurance policies, or certificates or other proof of insurance, to the Council on request.

8. Force Majeure

- 8.1 Neither party shall be in breach of this Contract, nor liable for delay in performing, or failure to perform, any of its obligations under it, if such delay, or failure, results from an event, circumstance, or cause beyond its reasonable control (**Force Majeure Event**).
- 8.2 The Consultant shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.
- 8.3 If a Force Majeure Event prevents, hinders or delays the Consultant's performance of its obligations for a continuous period equal to, or greater than, the time originally allowed for performance of the Contract, the Council may terminate the Contract immediately by giving written notice to the Consultant.

9. Confidentiality

- 9.1 The Consultant shall treat all confidential information belonging to the Council as confidential, and safeguard it accordingly, and shall not disclose any confidential information without the prior written consent of the Council.

10. Information Laws

- 10.1 The Consultant acknowledges that the Council is subject to the Freedom of Information Act 2000, and the Environmental Information Regulations 2004 (the **Information Laws**).
- 10.2 The Consultant shall provide, on request, and within any timescale required by the Council in writing from time to time, at its cost, all necessary assistance to enable the Council to comply with its obligations under the Information Laws.

11. Personal Data

- 11.1 The Consultant shall, and shall procure that its employees, agents and contractors shall, observe and perform its obligations under the Data Protection Act 2018 (**DPA**), and the UK GDPR (as defined in s.3(10), and supplemented by s. 205(4), of the DPA) (the **Data Protection Legislation**).
- 11.2 Without prejudice to clause 11.1, the Consultant shall, when handling the Council's data, including any personal data, ensure that it adopts such technical and security measures as the Council may require, or as would be adopted by a reasonably diligent provider of services equivalent to those delivered as Services under this Contract, to ensure that the security of the Council's data is maintained in accordance with the security requirements of the Data Protection Legislation.

11.3 The parties agree that they shall only process personal data insofar as the parties have identified:

11.3.1 the subject matter, duration, nature, and purpose of the processing;

11.3.2 the type of personal data to be processed; and

11.3.3 the categories of data subject.

11.4 In processing personal data under the Contract, the Consultant shall:

11.4.1 only act on the Council's written instruction (unless required to do otherwise by law);

11.4.2 ensure that any of its staff, agents, or employees processing personal data are subject to a duty of confidence;

11.4.3 not engage a sub-processor without the Council's prior written authorisation (and if such sub-processor is appointed, shall ensure that they are under obligations which are at least equivalent to those contained in this clause 11 (Personal Data));

11.4.4 take such steps to assist the Council in responding to requests from data subjects to exercise their rights under the Data Protection Legislation;

11.4.5 assist the Council in meeting its obligations in respect of:

11.4.5.1 notification of personal data breaches;

11.4.5.2 conducting data protection impact assessments; and

11.4.5.3 adopting any technical and security measures to protect the personal data; and

11.4.6 submit to such audits and inspections, and provide such information as the Council shall request in order to assess its compliance with this clause 11 (Personal Data).

11.5 The parties agree that a breach of the obligations in this clause 11 (Personal Data), shall constitute an irremediable, material, breach for the purpose of clause 12.1.1 below.

12. Termination

12.1 If, at any time after the commencement of the Contract, the Consultant:

- 12.1.1 commits a material breach of the terms of the Contract and, if such a breach is capable of remedy, fails to remedy that breach within fourteen (14) days of receipt of notice in writing to do so;
- 12.1.2 repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- 12.1.3 (in the case of an individual) becomes bankrupt or makes a composition or arrangement with his creditors; or
- 12.1.4 (in the case of a company) has a winding up order made or (except for the purposes of reconstruction or amalgamation) a resolution for voluntary winding up passed or a receiver or manager administrator or administrative receiver appointed or possession taken of the Consultant's assets by or on behalf of the holders of any debentures secured by a floating charge.

13. Miscellaneous

- 13.1 No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the Contract shall either be, or be deemed to be, a waiver, or in any way prejudice any right of that party under this Contract.
- 13.2 This Contract (including the price stated in the PO and any document referred to in it) may not be varied except by an agreement in writing which expressly refers to the condition or stipulation in this Contract being varied, and how, and which is signed by the duly authorised representatives of the parties.
- 13.3 This Contract does not create a partnership between the Council and the Consultant or make one of the parties the agent of the other for any purpose.
- 13.4 The parties shall attempt, in good faith, to negotiate a settlement to any dispute arising out of, or in connection with, this Contract. In the event a settlement cannot be reached within one (1) month of the dispute arising, the parties may exercise any remedy they have available under applicable law.
- 13.5 The Consultant shall not sub-contract, assign, or transfer this Contract, or the benefit of it, to any third party, except with the written consent of the Council.
- 13.6 The Consultant shall comply with all statutes, orders, regulations or bye-laws applicable to the performance of this Contract, and shall indemnify, and keep indemnified, the Council, against any losses, claims, liabilities, expenses, proceedings or otherwise, as a result of the Consultant's non-compliance with the same.
- 13.7 Any notification by either party to the other under the Contract shall be in writing and addressed to that party at its registered office (if a company), or its principal place of business (in any other case) and shall be delivered personally, sent by pre-paid first-

class post, commercial courier, or email. All such notices shall be deemed to have been received: (i) on the day of delivery, if sent by pre-paid first-class post; or (ii) on the date and time a receipt is signed, if sent by commercial courier; or (iii) immediately when notice is transmitted, if sent by email.