

Service Consultants Agreement – Short Form



MODEL SHORT FORM CONTRACT – CONSULTANCY SERVICES

DATED

2005

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

and

[INSERT NAME OF CONSULTANT]

CONSULTANCY SERVICES AGREEMENT

Relating to [INSERT DESCRIPTION OF THE CONSULTANCY SERVICES¹]

ROYAL BOROUGH OF KENSINGTON & CHELSEA

TOWN HALL
HORNTON STREET
LONDON
W8 7NX

Tel: 020 7937 5464

Fax: 020 7938 1445

Ref: [INSERT RBKC CASE/PROJECT NUMBER REFERENCE]

¹ E.g. "Relating to the Community Strategy Project"

relating or attached thereto and for the avoidance of doubt shall include the right to use, copy, modify, adapt, translate or incorporate all or any new Service Data with other materials;

- “Services” Means the consultancy services that the Consultant shall provide the Council as described in the Specification;
- “Service Data” Means all drawings, reports, documents, plans, software, formulae, calculations and other data and materials relating to the Services in place or to be developed and put in place under this Agreement;
- “Specification” Means Schedule [insert number];
- “Submission” Means the Consultant’s tender submission dated [insert date]³;
- “Terms” Means these contract terms; and
- “Variation” Means any instruction by the Council which materially amends the design, quality or quantity of the Services as shown or described in the Specification/Submission; it does not include any instruction required as a result of any negligent omission or default of the Consultant or any instruction relating to sequencing or timing of the execution of the Services.

- 1.2 In this Agreement, unless the context otherwise requires:
- 1.2.1 References to Parties, Schedules or clauses in this Agreement are references to Parties, Schedules or clauses of this Agreement;
- 1.2.2 The headings in this Agreement have been included for convenience only and shall not be deemed to be part of this Agreement or be used in the interpretation or construction of any Term of this Agreement;
- 1.2.3 Words denoting the singular shall include the plural and vice versa, references to the masculine shall include the feminine and the neuter and vice versa, and words denoting persons shall include corporations, partnerships and unincorporated associations;

³ Depending upon the length of the Submission documentation, the Submission could be attached as a schedule to this Agreement – insert the following wording: “... dated [insert date], as attached at Schedule [?] to this Agreement.”

- 1.2.4 References to any statutory provisions are to be construed as references to the statutory provision as for the time being and as amended or modified or to any statutory provision for the time being replacing or amending the same (and in either case shall include any orders or regulations under such provisions);
- 1.2.5 Words in this Agreement shall bear their natural meaning;
- 1.2.6 Any references to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document; and
- 1.2.7 In the event of any inconsistency or conflict between the other Contract Documents and these Terms, these Terms shall prevail.

2. Delivery

The Consultant shall perform the Services at the place and on the date or dates and at the times stated in the **Specification/Submission**, or if no dates or times are specified in the **Specification/Submission**, within a reasonable time.

3. Consultant's Obligations

In providing the Services the Consultant shall:

- 3.1 At all times conform to any and all codes of practice performance ratings and quality standards laid down in the Specification or these Terms or relating to the nature of the work being performed;
- 3.2 Undertake the Services with all the skill and care and diligence to be expected of a competent provider of services of a similar kind to the work concerned;
- 3.3 Adopt and utilise such quality control process as detailed in the **Specification/Submission** for the Consultant's performance of the Services;
- 3.4 Ensure that the team undertaking the Services are the same as those proposed to the Council in the Submission and if any member of the team is unavailable due to circumstances beyond the Consultant's reasonable control, the Council will be consulted in respect of any substitute who in any event must be appropriately skilled for the task(s) they are expected to perform;
- 3.5 Use its best endeavours to ensure that the appropriate team members are available at agreed and any other reasonable times to answer queries relating to the Services being performed;
- 3.6 Take all necessary steps to ensure co-operative working arrangements with any other person employed by the Council to offer specialist advice in relation to the Services and any other person employed or appointed by the Council in respect of the **Services**;

- 3.7 Act at all times in the best interests of the Council and with due regard to the fact that those persons that they have contact with who work for the Council are public servants and are required to observe the highest standards of probity and conduct in the course of their employment with the Council;
- 3.8 Perform the Services in accordance with all requirements set out in the Contract Documents, giving advice or opinions when asked to do so and to volunteer services as appropriate, and giving warnings of any mistake, discrepancy or omissions which could affect any of the Council's objectives in commissioning the Services; and
- 3.9 Ensure that the Consultant's staff carries appropriate means of identification at all times when on Council premises.

4. Contract Period

- 4.1 Subject to earlier termination under Clause 8, this Agreement shall begin on [insert date] or such other date as agreed between the Parties and shall continue until completion of the Services unless otherwise brought to an end in accordance with Clause 4.2.
- 4.2 The Council may at any time postpone the carrying out of all or any part of the Services by giving the Consultant prior reasonable notice in writing. If the Council has not given instructions to resume the whole or any part of the Services that have been postponed within a period of 28 days from the date of the notice, the Consultant may by written notice request that the Services are resumed. If written notice to resume is not given within 14 days of receipt by the Council of the Consultant's written request to resume, this Agreement will terminate with immediate effect.
- 4.3 If the Agreement is terminated in accordance with Clause 4.2, the Consultant will be entitled to reasonable remuneration for Services already provided up to the date of postponement based on the rates and prices set out in the Specification/Submission.

5. Third Party Rights

- 5.1 The Consultant warrants that:
 - (i) It has the absolute and unfettered right to supply the Services (and does not require any consent, licence or permission to do so); and
 - (ii) The Services do not and will not infringe any Intellectual Property Right of a third party.
- 5.2 Intellectual Property Rights in the Service Data newly created ("New Service Data") in connection with this Agreement shall belong to the Council and the Consultant grants the Council a non-exclusive irrevocable licence to use all existing Service Data belonging to the Consultant provided that the Council shall only use such data for purposes connected with the Agreement.

6. Price

- 6.1 The price paid by the Council for the Services provided under this Agreement shall be in accordance with the **Specification/Submission**. If no price is quoted or otherwise specified by the Council at the time of making this Agreement, then the Council will determine and pay a reasonable price (by reference to the general market price for that type of services). Prices shall be inclusive of all costs, expenses, obligations and liabilities howsoever incurred unless otherwise stated in the **Specification/Submission**.
- 6.2 Payment frequency shall be in accordance with the Specification and if no payment frequency is specified, payments shall be made in arrears within 28 days of satisfactory completion of the Services.
- 6.3 In addition to any sums payable pursuant to this Clause 6, the Council shall pay the Consultant such Value Added Tax as may be properly chargeable and the Consultant shall issue the Council a tax invoice in respect thereof.
- 6.4 In respect of prices:
- 6.4.1 Prices shall be fixed for a period of 12 months from the date of this Agreement; and
- 6.4.2 From then on, prices shall be reviewed on each anniversary of the Agreement ("the Review Date") and shall be varied by a percentage equivalent to any percentage increase shown in the Approved Index published in the month preceding the Review Date.
- 6.5 As a condition of payment, the Council will require an invoice bearing the order number, delivery address and brief description of the Services (and such other supporting information and documents as the Council may reasonably require from time to time) which shall be sent to the person and at the address named hereunder:
[Name
Role
Address
Ph and Fax details]
- 6.6 Late payment interest shall accrue at 2 per cent above the base rate for the time being of Lloyds TSB Bank Plc on all amounts that are more than 28 days outstanding following completion and invoicing for Services (unless the unpaid sum is in dispute). The Parties agree that the rate of interest described above provides the Consultant with a substantial remedy pursuant to sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.7 The Council shall make payments in pounds sterling and normally by electronic transfer of funds.

6.8 The Council reserves the right to send any amount payable directly to the Consultant's address.

7. Variation of Services

7.1 All Variations shall be authorised in writing by the Council before their execution. Any inconsistencies shall be resolved as directed by the Council.

7.2 Variations should be valued on the basis of the rates and prices set out in the **Specification/Submission** and the Consultant shall provide breakdowns and such supporting evidence as the Council may require to substantiate amounts the Consultant claims. A fair allowance shall be made for work executed under dissimilar Terms, and or which significantly changes the quantity of the work, and such rates shall be fair and reasonable in all circumstances. Wherever possible, all rates and costs shall be agreed with the Council in writing before any Variation is carried out.

7.3 No payment will be made for any Variations not specifically authorised in writing by the Council.

7.4 No liability is accepted by the Council for any claim by the Consultant for any loss (whether direct or indirect) and or expense occasioned by any Variation except where the sole cause of a variation is a breach of contract by the Council.

8. Termination

8.1 Without prejudice to the exercise of any alternative or additional remedy or of any accrued rights, the Council shall be entitled to determine this Agreement with immediate effect if any one of the following events occurs:

8.1.1 The Consultant becomes bankrupt, or makes a composition or arrangement with its creditors, or has a proposal in respect of its company for voluntary arrangement for a composition of debts or a scheme of arrangement approved in accordance with the Insolvency Act 2000, the Companies Act 1985 or the Enterprise Act 2002;

8.1.2 An administrative order is made over the Consultant's assets;

8.1.3 The Consultant has a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;

8.1.4 The Consultant has a provisional liquidator, or receiver or manager of its business;

8.1.5 The Consultant has an administrative receiver, as defined by the Insolvency Act 2000, appointed;

8.1.6 The Consultant is in circumstances which entitle the creditor to appoint, or have appointed a receiver, a manager or administrative receiver, or which entitles the Court to make a winding-up order;

8.1.7 The Consultant fails to comply with any of the provisions of these Terms, justifying termination; or

8.1.8 A material misrepresentation by the Consultant is discovered.

9. Consequences of Termination

Upon termination of this Agreement for any reason, the Consultant shall immediately release and handover to the Council any and all Council property (or third party property supplied to the Consultant by the Council), including but not limited to equipment, supplies, records, work in progress, plans, calculation drawings, electronic data or other material in any medium.

10. General Terms

[10.1 The Consultant's liability under this Agreement shall not be limited or excluded.] **OR**

[10.1 The Consultant's liability under this Agreement (other than liability for death or personal injury or property damage, for which no limitation or exclusion applies) shall not exceed the amount of professional indemnity insurance taken out by the Consultant or in force under Clause 10.2.]⁴

10.2 The Consultant undertakes to procure and maintain in respect of the liabilities and obligations it assumes under this Agreement for the duration of the Agreement and for [6 or 12]⁵ years thereafter, and in particular but without limitation in respect of any liability of the Consultant arising under the warranties stated in this Agreement:

- (i) Professional Indemnity Insurance for the minimum amount of £5 million each and every claim to cover the liabilities, loss and damage of and incidental to the provision of the Support Services for 6 years after completion of the Services;
- (ii) Public liability insurance covering the Consultant, his employees, agents and in respect of the acts of sub-consultants, from the effective date of this Agreement until the completion of the Services, to a minimum amount of £5 million for each and every claim, to cover loss and/or damage to property and injury

⁴ The second clause 10.1 can be used where a contractor refuses to accept the first clause 10.1, which is the ideal and more favourable clause for the Council. The choice of clause will be subject to negotiation with the Consultant.

⁵ Please note that if the agreement is to be signed as a contract, the statutory limitation period for bringing an action for breach of contract is 6 years from the date on which the cause of action accrued. If the agreement is signed as a deed however, the statutory limitation period is extended to 12 years after that date. Therefore, depending upon the nature of the contract, it is usually recommended that agreements be executed as deeds. See note 6 also.

- to persons arising out of and incidental to the provision of the Services; and
- (iii) Employer's liability insurance for the minimum amount of £10 million each and every claim, as a minimum to cover death or personal injury to the Personnel and to meet all the Supplier's statutory obligations.

10.3 Further to clause 10.2:

- (i) The insurance procured and maintained shall be with insurers of good repute and good financial standing reasonably acceptable to the Council;
- (ii) At the request of the Council, the Consultant shall provide evidence of the insurances that it is obliged to maintain under clause 10.2 within 14 days of such request; and
- (iii) The insurance policies referred to in clause 10.2 shall not include an excess greater than £500 each and every claim.

The Consultant shall inform the Council however, if such insurance ceases to be available at commercially reasonable rates in order that the parties can discuss the best means of protecting their respective positions in the absence of such insurance.

10.4 The Consultant shall indemnify the Council against all losses, damage, actions, claims, demands, proceedings, costs and expenses whatsoever the Council may suffer or incur as a direct or indirect result of any negligence of the Consultant, its employees, agents or sub-Consultants arising out of or in the course of or arising from this Agreement, except in the case of personal injury or property damage to the extent that any injury loss or damage may arise out of the negligence of the Council in which case the Council will be so liable but the Council shall have no other liability whatsoever.

10.5 Without prejudice to the Council's rights at common law, equity or statute the Consultant shall re-perform (at the Council's option) any defective Services.

10.6 If one or more of the Terms are to any extent invalid or unenforceable under any applicable law, the remainder of the Terms shall not be affected and shall be valid and enforceable to the fullest extent permitted by applicable law. The invalid provision shall be deemed replaced by that legally valid provision which approximates the economic intent of the invalid provision.

10.7 The Consultant shall not advertise or publicise that it supplies Services to the Council without the Council's prior written consent.

10.8 Nothing in these Terms shall imply any relationship of partnership, joint venture, principal or agent between the Parties.

- 10.9 Failure by the Council at any time to enforce these Terms, or to require performance of any of the provisions of these Terms, shall not be construed as a waiver of any such provision and shall not affect the validity of these Terms or any part thereof or the right of the Council to enforce any provision in accordance with its terms.
- 10.10 Nothing in these Terms shall prejudice or affect the Council's rights, powers, duties and obligations in relation to the exercise of its functions.
- 10.11 The Consultant must, in carrying out the Services, observe good environmental practice complying at all times with the latest relevant codes of practice and best industry guidance.
- 10.12 The Consultant shall not assign or sub-contract its responsibilities in whole or in part under this Agreement without the Council's prior written consent.
- 10.13 Sub-contracting will not relieve the Consultant of its obligations under this Agreement.
- 10.14 The Contract Documents supersede any representations, negotiation or understandings whether written, oral or in electronic form carried out or entered into prior to the date of this Agreement (except that the Consultant warrants that all information given to the Council during any discussions or negotiations leading up to the entering into the Agreement and not included in the Contract Documents was when given, and remains to the best of the Consultant's knowledge, accurate in all respects).
- 10.15 Otherwise than is expressly provided in these Terms, it is not intended that any party who is not a party to this Agreement shall have the right to enforce any of the obligations rights or provisions contained in these Terms and rights under the Contracts (Rights of Third Parties) Act are excluded.
- 10.16 The Consultant shall co-operate and assist the Council with disclosures under the Freedom of Information Act 2000 as if it were under identical duties and the Council shall have the right to determine the manner, timing and terms under which such disclosures shall be made save that nothing in this Clause 10.16 shall impose an obligation on either Party to disclose information which it would be precluded from providing under the said Act.
- 10.17 Subject to Clause 10.7 above, the Consultant shall keep all of the information that the Council supplies ("the Information") strictly confidential (for the minimum of x years after completion of the Services) and will not disclose it to any third party other than the Consultant's staff. However, the Information will only be disclosed to those personnel of the Consultant who need to know it for the proper

performance of their duties in relation to the Services and then only to the extent reasonably necessary. The Consultant shall take appropriate steps to ensure that all personnel who are given access to the Information are aware of its confidentiality.

11. Dispute Escalation Clause

The Council and the Consultant shall use their best efforts to negotiate in good faith and settle amicably any dispute that may arise out of or relate to this Agreement or a breach thereof. If any such dispute cannot be settled amicably through ordinary negotiations by appropriate representatives of the Council and the Consultant, the dispute shall be referred to the [Insert appropriate director etc] of the Council and the [Insert role of senior person in consultant's company/organisation] of the Consultant who shall meet in order to attempt to resolve the dispute. If any such meeting fails to result in a settlement, the matter may be submitted for resolution to a court of competent jurisdiction at the election of either Party.

12. Governing Law and Jurisdiction

The formation, construction and validity of these Contract Documents shall be governed by English law and the Supplier hereby irrevocably submits to the jurisdiction of the Courts of England and Wales.

IN WITNESS of which the Parties have executed this Agreement as a [Deed or Contract]⁶ on the date set out at the beginning of this Agreement.

SIGNED [as a Deed]⁷ by: [INSERT CONSULTANT NAME]
[Duly authorised on behalf of [Insert Consultant Company]]⁸

Signed:

Name:

Position held:

In the presence of:

Witness Signature:

Witness Name:

Occupation:

SIGNED [as a Deed] by: [insert name]
Duly authorised on behalf of the ROYAL BOROUGH OF
KENSINGTON AND CHELSEA

Signed:

Name:

Position held:

⁶ The Council usually signs an agreement “as a deed” on the basis that the statutory limitation period for bringing an action for breach of contract is extended. If an agreement is executed as a deed, the limitation period is extended from 6 years from the date on which the cause of action accrued (being the limitation period for contracts), until 12 years after that date. The choice should be made in light of the nature of and the risks associated with the contract, however contracts valued at £60,000 or more are normally signed as a deed.

⁷ See note 5 above. Please refer to the Model Execution and Attestation clauses document on the intranet (under Doing My Job/Advice and Guidance/Purchasing Procurement) for the correct clauses to use for agreements signed as deeds by companies using a seal or not,

⁸ Only insert the ‘Duly authorised...’ section if the Consultant is a company.

In the presence of:

Witness Signature:

Witness Name:

Occupation:

SPECIFICATION

1.0 THE SERVICES

(INSERT DESCRIPTION ETC)

2.0 PAYMENT

(INSERT FREQUENCY, AMOUNT, ETC)