

**Contractual Agreement between
Berkshire Association of Local Councils
(BALC)
And
Hampshire Association of Local Councils
(HALC)**

**The agreement outlines the terms of the agreement
between the BALC (The Customer) and HALC (The
supplier) for the provision of membership services,
Training and Administrative services to BALC**

**Once signed, the agreement will be effective from 1st April
2021**

Terms and Conditions of Service

1 Interpretation

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| “Agreement” | means the contract between (i) the Customer (ii) the Supplier constituted by the Supplier’s countersignature of the Service Agreement and includes Appendix A and Appendix B; |
| “Charges” | means the charges for the Services as specified in the Service Agreement; |
| “Confidential Information” | means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential; |
| “Customer” | means the organisation named as Customer in the Service Agreement; |
| “DPA” | means the Data Protection Act 2018; |
| “Expiry Date” | means the date for expiry of the Agreement as set out in the Service Agreement; |
| “FOIA” | means the Freedom of Information Act 2000; or as subsequently amended |
| “Information” | has the meaning given under section 84 of the FOIA; |
| “Key Personnel” | means any persons specified as such in the Service Agreement or otherwise notified as such by the Customer to the Supplier in writing; |
| “Party” | means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them; |
| “Personal Data” | means personal data (as defined in the DPA) which is processed by the Supplier or any Staff on behalf of the Customer pursuant to or in connection with this Agreement; |
| “Request for Information” | has the meaning set out in the FOIA (where the meaning set out for the term “request” shall apply); |
| “Retained Monies” | is the balance of BALC membership fees collected after the payment of the percentage transferred to the BALC Executive account; |
| “Services” | means the services to be supplied by the Supplier to the Customer under the Agreement; |
| “Specification” | means the specification for the Services (including as to quantity, description and quality) as specified in the Service Agreement; |
| “Staff” | means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement; |
| “Supplier” | means the organisation named as Supplier in the Service Agreement; |
| “Term” | means the period from the start date of the Agreement set out in the Service Agreement to the Expiry Date as such period may be extended in accordance with clause Error! Reference source not found. or terminated in accordance with the terms and conditions of the |

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| | Agreement; |
| “VAT” | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and |
| “Working Day” | means a day other than Saturday, Sunday or statutory Bank Holidays. |

- 1.1 In these terms and conditions, unless the context otherwise requires:
- 1.1.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
 - 1.1.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
 - 1.1.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
 - 1.1.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
 - 1.1.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

2 Basis of Agreement

The Service Agreement constitutes an agreement between Berkshire Association of Local Councils (BALC), the customer, and Hampshire Association of Local Councils (HALC), the supplier, for the purchase and provision of services subject to and in accordance with the terms and conditions of the Agreement.

3 Supply of Services

- 3.1 The Supplier shall invoice all of the Customer’s members and collect all subscriptions. Once the subscriptions are received the Supplier shall then transfer a sum to a separate Customer account (the BALC Executive Account) in order for the Customer to continue with its strategic and political objectives. This would typically cover the maintenance of the quarterly BALC executive meetings, attendance for BALC executive members at external bodies such as Sercaf and attendance at the NALC conference. The remainder of the monies shall remain with the supplier in order to supply the Services to the Customer for the Term outlined in the Service Agreement, subject to and in accordance with these terms and conditions.

The amount to be transferred to the BALC Executive Account will be 17% of the total BALC membership fees collected. This percentage will be transferred by the end of June each financial year. Any amendments to this percentage will be subject to negotiation between the parties and agreed at the joint oversight committee.

The BALC Executive Account will be administered by the Supplier for operational purposes, however payments will be authorised by the BALC Executive Committee in the form of an email.

In supplying the Services, the Supplier shall:

- 3.1.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer’s reasonable instructions;
- 3.1.2 perform the Services with all reasonable care, skill and diligence in accordance

with good industry practice in the Supplier's industry, profession or trade;

- 3.1.3 use Staff and Subcontractors who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
 - 3.1.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
 - 3.1.5 comply with all applicable laws; and
 - 3.1.6 provide all equipment, tools and other items as are required to provide the Services.
- 3.2 The Customer may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, any additional charges shall be discussed and agreed and a decision made about the most appropriate source for the additional fees will be agreed in writing between the Customer and the Supplier.
- 3.3 The parties agree that the amount of money to be retained by the supplier will increase annually in line with RPI subject to clause 3.4. The RPI figure used will be the one published in the preceding October. It will be entirely at the discretion of the Customer whether this increase will be as a result of an increase to membership fees, or a temporary change to the percentage sum that is transferred back to the supplier. This will be decided on an annual basis and notified to the supplier in writing, following discussion.
- 3.4 Where the increase in sums Retained by the supplier in any one year exceeds the annual RPI increase, the actual sums Retained will constitute the agreed increase.

4 Term

- 4.1 The Agreement shall take effect on the 1st April 2021 and shall continue subject to the notice clause 14.

5 Charges, Payment and Recovery of Sums Due

- 5.1 It is accepted by all parties that the funding mechanism outlined in section 3.1 shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services save for any travel associated with BALC Executive Meetings.
- 5.2 It is accepted by all parties that the BALC Executive Account shall be kept separate and show separate accounting. All other sums retained by the Supplier will become part of the Supplier's operating budget and will not be separately accounted for.

6 Premises and equipment

- 6.1 If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to appropriate premises for the purpose of supplying the Services in relation to the BALC Executive. All equipment, tools and vehicles brought onto these premises by the Supplier or the Staff shall be at the Supplier's risk. In addition the Customer undertakes that appropriate Public Liability insurance is in place.
- 6.2 The Customer shall ensure that the premises provided for BALC Executive meetings or any other meetings involving the supplier's employees offer a safe working environment. Whilst on these premises the Supplier shall, and shall procure that all Staff shall, comply with all necessary Health and Safety requirements.
- 6.3 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all reasonable security requirements

specified by the Customer in writing.

6.4 Without prejudice to clause 3.1.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.

6.5 The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 10 Working Days.

7 Intellectual Property Rights

7.1 All intellectual property rights in any materials provided by the Customer to the Supplier for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.

7.2 All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall remain with the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).

8 Governance and Records

8.1 The Supplier shall:

8.1.1 attend progress meetings with the Customer at the frequency and times specified by in the Service Agreement and shall ensure that its representatives are suitably qualified to attend such meetings; and

8.1.2 submit progress reports to the Customer at the times and in the format specified by the Service Agreement.

8.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

9 Confidentiality

9.1 Subject to clause 9.2, each Party shall:

9.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

9.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

9.2 Notwithstanding clause 9.1, a Party may disclose Confidential Information which it receives from the other Party:

- 9.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;
- 9.2.2 to its auditors or for the purposes of regulatory requirements;
- 9.2.3 on a confidential basis, to its professional advisers;
- 9.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- 9.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 9.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and
- 9.2.6 where the receiving Party is the Customer:
 - (a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;
 - (b) in accordance with clause 10.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 11.

10 Freedom of Information

- 10.1 The Supplier acknowledges that the Customer may be subject to the requirements of the FOIA and shall:
 - 10.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA;
 - 10.1.2 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 10 Working Days of the Customer's request for such Information; and
 - 10.1.3 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 10.2 The Supplier acknowledges that the Customer may receive requests under the FOIA to disclose Information concerning the Supplier or the Services (including commercially sensitive information). In these situations the Customer will refer the request to the Supplier.

11 Protection of Personal Data and Security of Data

- 11.1 The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.
- 11.2 Notwithstanding the general obligation in clause 11.1, where the Supplier is processing Personal Data for the Customer as a data processor (as defined by the DPA) the Supplier shall:
 - 11.2.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data, and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or

destruction of, or damage to, the Personal Data;

11.2.2 provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA;

11.2.3 promptly notify the Customer of:

- (a) any breach of the security requirements of the Customer as referred to in clause 11.3; and
- (b) any request for personal data.

11.3 When handling Customer data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with appropriate security protocols.

12 Liability

12.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.

12.2 Subject always to clause 12.3:

in no event shall the Supplier be liable to the Customer for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

12.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

12.3.1 death or personal injury caused by its negligence or that of its Staff;

12.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

12.3.3 any other matter which, by law, may not be excluded or limited.

13 Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

14 Termination

14.1 Either party may terminate the Agreement at any time by notice in writing to the other party to take effect on any date falling at least 12 months from the date of the notice. Without prejudice to any other right or remedy it might have, either party may terminate the Agreement by written notice to the other party with immediate effect if the other party:

14.1.1 is in material breach of any obligation under the Agreement which is not

- 14.1.2 capable of remedy;
 - 14.1.2 repeatedly breaches any of the terms and conditions of the Agreement 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 and conditions of the Agreement;
 - 14.1.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the party receiving notice specifying the breach and requiring it to be remedied;
 - 14.1.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
 - 14.1.5 breaches any of the provisions of clauses **Error! Reference source not found.**9, 10, 11 and 15;
 - 14.1.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt in any jurisdiction; or
 - 14.1.7 fails to comply with legal obligations
- 14.2 Either party should notify the other party as soon as practicable of any change of control or any potential such change of control.
- 14.3 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 6, **Error! Reference source not found.**7, 8.2, 9, 10, 11, 12, 17 and 18.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 14.4 Upon termination or expiry of the Agreement, the Supplier shall:
- 14.4.1 give all reasonable assistance to the Customer and any incoming supplier of the Services; and
 - 14.4.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

15 Compliance

- 15.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 15.2 The Supplier shall:
- 15.2.1 comply with all the Customer's health and safety measures while on the premises provided to carry out BALC Executive work; and
 - 15.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 15.3 The Supplier shall:
- 15.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time; and

15.3.2 take all reasonable steps to secure the observance of clause 15.3.1 by all Staff.

16 Prevention of Fraud

The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

17 Dispute Resolution

17.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party. For the Supplier this will be the Chief Executive and for the Customer will be the Chairman. If agreement cannot be reached between these two roles then the matter shall be referred to the joint oversight committee. The Joint oversight Committee will be constituted of 3 senior roles from both parties.

17.2 If the dispute cannot be resolved by the Parties within three months of being escalated as referred to in clause 17.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

17.3 If the Parties fail to appoint a Mediator within three months, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

18 General

18.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.

18.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.

18.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.

18.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

18.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

18.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other

Party's behalf.

18.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

18.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

19 Notices

19.1 For the Customer notice may be issued by the Chairman or Vice Chairman of BALC. For the customer this will be the Chief Executive or Chairman. Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or e-mail to the address of the relevant Party set out in the Service Agreement, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:

19.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day.

19.3 Notices under clauses 13 (Force Majeure) and 14 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery.

20 Governing Law and Jurisdiction

The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

Signed for and on behalf of Berkshire Association of Local Councils

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Chairman

Dated

Signed for and on behalf of Hampshire Association of Local Councils

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Dawn Hamblet, Chief Executive

Dated