Gravesham Borough Council

Food Safety Consultancy Service – Terms and Conditions

1. *Interpretation*

"Acknowledgement"	means the written confirmation sent to the Customer confirming the Charges (as shown in the Appendix 1) and providing a receipt for payment of said charge, the standard fee, provided by our contact centre when payment is taken;.
"Agreement"	means the contract between (i) the Supplier and (ii) the Customer;
"Charges"	means the charges for the Services as specified in the Appendix 1
"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 person named as the Customer in the Acknowledgement or Offer Letter (insert name/company name and address);
"Deliverables"	means all documents, products and materials developed by the Supplier or its agents, sub-contractors, consultants and employees in relation to the Services in any form;
"Expiry Date"	means the date on which all of the Services have been provided;
"FOIA"	means the Freedom of Information Act 2000;
"Offer Letter"	means the letter from the Supplier to the Customer offering to supply the Services incorporating these terms and conditions;
"Party"	means the Supplier or the Customer (as appropriate) and "Parties" shall mean both of them;
"Pre-existing Material"	means all documents, materials and information provided by the Supplier relating to the Services which existed prior to the commencement of the Agreement;

“Services”	means the Services to be supplied by the Supplier to the Customer under the Agreement as outlined in Appendix 2;
“Supplier”	means Gravesham Borough Council;
“Term”	means the period from the start date of this Agreement to the Expiry Date;
“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 a Saturday or Sunday) on which banks are open for business in the City of London.

2. *General*

2.1 The Services are managed and administered by Gravesham Borough Council.

2.2 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.

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

2.4 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.

2.5 Any waiver or relaxation 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.

2.6 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time, and shall include all subordinate legislation made from time to time under that legislation or provision.

3. *Basis of Agreement*

3.1 The offer includes: up to 4 hours of charged-for help and advice, delivered either verbally and/or during an on-site visit; including the drafting of bespoke written report containing advice; signposting to other useful

information. Report writing and signposting activities will take up to 2 hour of officer time

3.2 Terms and Conditions are to be signed and dated by the Customer, and returned to the specified email or postal address before any work can begin. A reply email from the Customer, confirming agreement of these Terms and Conditions, is also a sufficient alternative to a signed document.

3.3 The Customer will pay any Charges owing to the Supplier in full before the Services are commenced.

4. *Supply of Services*

4.1 In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the Services as shown in Appendix 2 to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.

4.2 In supplying the Services, the Supplier shall use reasonable endeavours to perform the Services with all reasonable care, skill and diligence in accordance with good industry practice; and provide all equipment and other items as are required to provide the Services

4.3 The Supplier undertakes to ensure that only suitably experienced and suitably qualified officers provide advice, that the advice will be impartial and that all reasonable steps will be taken to ensure that it is correct at the time at which it is given.

4.4 The Customer should take independent legal and professional advice for any specific issues the Customer may have regarding the Customer's particular business.

4.5 On-site visits apply to premises within the Gravesham Borough only

4.6 The Supplier undertakes to use its best endeavors to deliver the Services to the Customer within 6 weeks from receipt of payment, unless a different timescale is agreed between the Customer and the Supplier. If the standard turnaround time of 6 weeks is not possible due to complexity or external consultation requirements the Customer will be informed and a revised timescale will be discussed with the customer

5. *Term*

5.1 The offer is valid for 12 months from the Supplier's receipt of signed terms and conditions or of the Customer's agreement to them

6. *Statutory Duties*

6.1 Using the Services will not prejudice any future statutory inspection by the Supplier or otherwise.

6.2 The Supplier is empowered to enforce a variety of civil and criminal statutes. The Supplier has a duty to investigate any allegations of breaches of such legislation and the provision of the Services does not affect this duty in any way whatsoever.

6.3 Nothing in this Agreement prohibits the Supplier, or other local or central government authorities from taking legal action in line with statutory enforcement duties and in accordance with the Supplier's enforcement policy as amended from time to time.

6.4 The Supplier reserves the right to take enforcement action against any individual or business that neglects its legal obligations and/or deliberately sets out to harm the interests of consumers or other legitimate businesses. The criteria governing enforcement action are set out in the enforcement policy, the current version of which can be found on the Gravesham Council website - Food Safety Enforcement Policy

7. Charges and Payment

7.1 The Charges for the Services shall be the option offered by the Supplier and accepted by the Customer from those set out in the Appendix 1. A standard fee shown at Appendix 1 must be paid on submission of the signed Terms and Conditions, or the Customer's agreement to them, prior to the charged for advice and any site visit by the Supplier's Food and Safety Officer. In the event that the Supplier agrees in writing to any variation to the scope of the Services, the Charges shall be agreed in writing between the Customer and the Supplier.

7.2 Payment is to be made to Gravesham Borough Council.

7.3 All amounts stated are inclusive of VAT.

7.4 If there is a dispute between the Parties as to the Charges, the Customer shall pay the undisputed amount. Any disputed amounts shall be resolved through the dispute resolution procedure in clause 15.

7.5 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

7.6 In the event that the Customer does not pay the Supplier in accordance with clauses 3.3, 7.4 or 7.5 above then the Supplier has the right either not to commence or to cease providing the Services to the Customer until the outstanding amounts including VAT and interest are settled in full. Subject to clause 12 below the Supplier will not bear any liability to the Customer as a result of the cessation of the Services in accordance with this clause.

7.7 The Supplier reserves the right to charge the Customer additional sums if, due to circumstances reasonably unforeseen by the Supplier, additional advice is necessary. In the event that this occurs, the Supplier shall agree these extra charges with the Customer in advance, before the additional advice is provided.

7.8 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law)

8. Customer's Obligations

8.1 The Customer Shall;

8.1.1 cooperate with the Supplier in all matters relating to the Services;

8.1.2 provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements;

8.1.3 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;

8.1.4 inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises;

8.1.5 provide, in a timely manner, such information as the Supplier may require, and ensure that it is accurate in all material respects.

8.2 If the Supplier's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

8.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Agreement, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

8.4 In seeking to obtain the Services from the Supplier, the Customer undertakes to provide details of the Customer's business, including trading name/s, legal name, postal addresses, telephone numbers, email addresses, website addresses and the nature of the Customer's business,

as well as contact details for the person requesting the Services. The Services shall not be provided until this information is received.

8.5 The Customer will provide the necessary up-to-date and accurate information and true to the best of the Customer's knowledge and belief about the Customer's business in order for the Services to be provided. The Supplier will only provide the Services on the basis of the information provided by the Customer. The Customer bears full responsibility for ensuring that all information provided to the Supplier is complete, accurate, true and up-to-date. Any false declarations made by the Customer may result in prosecution.

8.6 The Customer shall provide the Supplier with at least 24 hours' notice of site visit cancellations, failing which the Supplier shall be entitled to charge the Customer for the full cost of the Services.

9. Intellectual Property Rights

9.1 As between the Customer and the Supplier, all intellectual property rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Supplier.

9.2 The Supplier licences all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary and to enable the Customer to make reasonable use of the Deliverables and the Services. If this Agreement is terminated, this licence will automatically terminate.

9.3 The Customer acknowledges that, where the Supplier does not own any Pre-existing Materials, the Customer's use of rights in the Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to licence such rights to the Customer.

9.4 The provision of the Services by the Supplier to the Customer does not entitle the Customer or the Customer's business to claim any affiliation with or approval by the Supplier. The Customer is not permitted to use any of the Supplier's logos.

10. Confidentiality and Freedom of Information

10.1 Subject to clause 10.2 below, each Party shall:

10.1.1 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

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

10.2 The Supplier may disclose Confidential Information which it receives from the Customer to the extent that the Supplier (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions or if disclosure is required by applicable law or by a court of competent jurisdiction.

10.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Customer hereby gives its consent for the Supplier to publish the Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Supplier may consult with the Customer to inform its decision regarding any redactions but the Supplier shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

10.4 The Supplier does not guarantee the confidentiality of information it holds. The Supplier may receive requests under the FOIA, the Environmental Information Regulations 2004 or any other applicable legislation or codes that govern access to information and the Supplier may be under an obligation to provide such information on request. Such information may include matters relating to, or arising out of this Agreement.

10.5 The Customer shall not make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Supplier.

11. Data Protection

11.1 The Supplier will not keep information longer than is necessary and whilst in the Supplier's possession will safeguard the Customer's personal information according to the requirements of the Data Protection Act 2018, General Data Protection Regulation or any equivalent legislation.

11.2 The Supplier will use the information the Customer has supplied only for the purposes of maintaining a record of the Services and invoicing. The information will be retained in line with the current retention schedule.

12. Liability and Insurance – THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

12.1 Nothing in the Agreement limits any liability which cannot legally be limited, including (but not limited to) liability for:

12.1.1 death or personal injury caused by negligence;
12.1.2 fraud or fraudulent misrepresentation; and

12.1.3 breach of the terms implied by S.2 Supply of Goods and Services Act 1982 (title and quiet possession)

12.2 Subject to clause 12.1 the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement for:

12.2.1 Loss of profits
12.2.2 Loss of sales or business
12.2.3 Loss of anticipated savings
12.2.4 Loss of or damage to goodwill
12.2.5 Loss of use or corruption of software, data or information
12.2.6 Any indirect or consequential loss.

12.3 Subject to clauses 12.1 and 12.2, the Supplier's total aggregate liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement shall be limited to 125% of the Charges.

12.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.

12.5 Each of the Parties agrees that they will at their own cost effect and maintain appropriate policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Parties pursuant to this Agreement. For the Customer, this shall include (but not be limited to) a policy of Public Liability insurance in a sum at least sufficient for Customer business needs.

13. Force Majeure

13.1 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 The Supplier may terminate the Agreement at any time by giving one (1) months' notice in writing to the Customer.

14.2 Without prejudice to the other remedies or rights a Party may have, either Party may terminate the Agreement with immediate effect on written notice to the other Party if the other Party:

14.2.1 is in material breach of any obligation under the Agreement which is not capable of remedy;

14.2.2 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;

14.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the other Party receiving notice specifying the breach and requiring it to be remedied.

14.3 If the Supplier terminates the Agreement pursuant to clause 14.2 above the Customer shall immediately pay to the Supplier all of the outstanding unpaid Charges and interest.

14.4 For the purposes of clause 14.2, the Customer shall be deemed to be in material breach of its obligations if it has not paid any undisputed amounts within 28 days of them falling due.

14.5 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 any provision of the Agreement that either expressly or by implication has effect after termination.

15. Dispute Resolution

15.1 If the Customer or the Customer's business has any complaints or is not satisfied with the quality of the Services in the first instance the Customer should telephone during office hours or contact EMAIL ADDRESS

15.2 In the event that any dispute is not resolved in accordance with clause 15.1, the Customer shall then refer to Gravesham Borough Council's Complaints Procedure available on the website at this link and/or from the Customer's local Council Offices

15.3 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 may agree to alternative dispute resolution, such as mediation. Either Party may exercise any remedy it has under applicable law.

16. Assignment and Other Duties

16.1 The Supplier may at any time assign, transfer, sub-contract or deal in any other manner with any or all of its rights and obligations under the Agreement; and

16.2 The Customer shall not assign, transfer, sub-contract or deal in any other manner with any of its rights and obligations under the Agreement

17. Notices

17.1 Any notice to be given under the Agreement shall be in writing and shall be sufficiently served by personal delivery, or by being sent by first class post in a registered letter to the address of the relevant Party set out in the Offer Letter or Acknowledgment, or such other address as that Party may from time to time notify to the other Party.

18. Severance

18.1 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

19. Governing Law and Jurisdiction

19.1 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.

20. THIRD PARTY RIGHTS

20.1 Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
For further help or information please contact:

APPENDIX 1 – CHARGES FOR THE FOOD CONSULTANCY SERVICES

2 x Hours of Officer Time
2 x Hours of Administration Time

4 Hours of officer time on a cost recovery basis - £175.00

APPENDIX 2 – SERVICES TO BE PROVIDED TO THE CUSTOMER

Up to 2 hours of Officer time onsite at the business premises to provide advice and guidance to the Food Business Operator in relation to Food Safety compliance.

Up to 2 hours of Officer time to carry out the administration relating to the onsite visit, including the preparation of a written report with advice and guidance,

correspondence to arrange the site visit and recording of visits and advice on the Council's database.

DISCLAIMER

This service is provided by Gravesham Borough Council Food and Safety Officers, who are appropriately experienced and qualified individuals within the Communities and Inclusive Growth Directorate. Any views or opinions expressed by Council Officers are given in good faith, and whilst we will do our utmost to ensure these are technically correct, they are provided without prejudice to the formal consideration of any statutory food safety inspection. This service does not take the place of formal food safety inspections.
You should therefore be aware that Food and Safety Officers cannot provide assurances or any guarantees about the final formal outcome of your National Food Hygiene Rating Score.

Please note that not accepting this offer will not prejudice any future statutory food safety inspections.

Other sources of professional advice on food safety are available and there is no legal requirement for your food business to accept this offer of advice.
Fees and charges associated with this service are to cover costs and are not for profit or commercial gain.

By ticking the box at the bottom of our Application Form for Food Business Advice Services, you are confirming that you have read, understood and accept these terms and conditions prior to submitting an application. Alternatively, please email foodandsafety@gravesham.gov.uk confirming you have read, understood and accept the Terms and Conditions.
The offer is valid for 12 months from the Supplier's receipt of signed Terms and Conditions or of the Customer's agreement to them.

For more information Gravesham Borough Council how we process personal data, please view the following: Privacy notice | Privacy – Gravesham Borough Council