

## **Terms and conditions for the supply of services**

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## 1. DEFINITIONS AND INTERPRETATION

1.1. The definitions and rules of interpretation in this clause apply in these conditions:

"Contract" means the contract between the Supplier and the Council consisting of these conditions and (where applicable) the Tender, the Purchase Order, the Specification and these conditions;

"Council" means Surrey County Council of County Hall, Penrhyn Road, Kingston-upon-Thames, Surrey KT1 2DN;

"Employment Checks" means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks;

"Equality Legislation" means the Equality Act 2010 and such other acts and legislation to ensure, among others; equality of access to goods and services; promotion of good relations between groups in society; the provision of reasonable adjustments for people with disabilities; and equality in employment, equality legislation shall help organisations and providers to meet their obligations under anti-discrimination laws;

"Purchase Order" means the purchase order generated (where applicable) by the Council's SAP system for the Services;

"Premises" means the location where the Services are to be performed, as specified in the Purchase Order and/or Tender;

"Price" means the fee to be paid under the Contract to the Supplier;

"Regulated Activity" means any work which is currently defined as a regulated activity relating to children within the meaning of Schedule 4 Part 1 of the Safeguarding Vulnerable Groups Act 2006;

"Services" means the services to be provided as specified in the Tender and/or Purchase Order and shall, include any materials, articles and goods to be supplied;

"Specification" means the document provided by the Council detailing the required specifications of the Service;

"Supplier" means the person, company, firm or partnerships who have accepted the Council's Purchase Order for Services and is identified in the Purchase Order;

"Tender" means (where applicable) the tender or Request For Quotation given to the Council by the Supplier;

"Term" means the period for which the Service is to be provided as stated in the Purchase Order and/or Tender.

## **2. APPLICATION OF TERMS**

2.1 These conditions are the Council's standard terms and conditions which will govern the Contract between the Council and the Supplier to the entire exclusion of all other terms and conditions unless any other contract terms have been agreed between the parties in writing.

2.2 If this Contract includes the Supply of any goods the Supplier must read and acknowledge the Council's terms and Conditions for the Supply of Goods

## **3. PROVISION OF SERVICES**

3.1. The Supplier confirms that it has understood the nature and extent of the Services to be carried out and has satisfied itself that the Supplier can provide the Services at the Premises for the Term. The Council shall, upon request grant access to the Premises as may be reasonable for this purpose.

3.2. The Supplier warrants and undertakes to the Council that it:

3.2.1. Shall exercise in the performance of that the Services are performed to a level of skill, care and diligence reasonably to be expected of an appropriately qualified and competent supplier experienced in performing like services;

3.2.2. Shall devote such time as is required in order to fulfil its duties under the Contract;

3.2.3. Shall comply with all reasonable and lawful directions given to it under the Council's authority; and

3.2.4. Shall ensure that the Services are completed in accordance with this Contract.

3.3. The Supplier shall not (and shall procure that the Supplier's agents and employees do not) say or do anything that might lead any other person to believe that the Supplier is acting as the Council's agent; and nothing in this Contract shall impose any liability on the Council in respect of any liability incurred by the Supplier to any other person. This condition shall not be taken to exclude or limit any of the Council's liability to the Supplier that may arise by virtue of either a breach of this Contract or any negligence on the Council's part or the Council's staff or agents.

3.4. The Supplier shall take the steps reasonably required by the Council to prevent unauthorised persons being admitted to the Premises. If the Council gives the Supplier notice that any person is not to be admitted to or is to be removed from the Premises or is not partake in the performance of the Contract, the Supplier will take all reasonable steps to comply with such notice and if required by the Council the Supplier shall replace any person removed under this condition with another suitably qualified person and procure that any pass issued to the person removed is returned forthwith to the Council.

3.5. If and when instructed, the Supplier shall give the Council a list of names of all persons who are or may be at any time providing the Services or any part of them, specifying the capacities in which they work, and giving such other particulars and evidence of identity the Council may reasonably require.

3.6. The Council's decision as to whether any person is to be allowed in the Premises condition will be final and conclusive.

3.7. The Supplier shall bear the cost of any notice, instruction or decision of The Council under this Contract.

3.8. The Supplier shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Council's prior written consent.

3.9. Access to the Premises shall only be as required to enable the Supplier to carry out the Services concurrently with the execution of work by others. The Supplier shall co-operate with all such other contractors and Council employees as the Council may reasonably require.

3.10. The Council shall have the power at any time during the performance of the Services to order in writing:

3.10.1. The removal from the Premises of any materials which are in the Council's opinion either hazardous, noxious or not in accordance with the Contract; and/or

3.10.2. The substitution of proper and suitable materials; and/or

3.10.3. The removal and proper re-execution of any work which, in respect of material or workmanship is not in the Council's opinion in accordance with the Contract.

3.11. On completion of the Service the Supplier shall leave the Premises in a neat and tidy condition.

#### **4. THE SUPPLIERS PERSONNEL**

4.1 The Supplier undertakes to ensure that sufficient suitably qualified personnel are provided to ensure that the Services are performed in accordance with the Specification including (without limitation) during periods of absence of some members of its personnel due to sickness, maternity leave, holidays, training or otherwise.

4.2 The Supplier undertakes to ensure that all of their personnel supplied in and about the provision of the Services are honest, skilled, competent, diligent, trained and experienced in the work which they are to perform.

4.3 Where the provision of the Services requires any of the Supplier's employees or volunteers to work in a Regulated Activity with children and/or vulnerable adults, the Supplier will make checks in respect of such employees and volunteers with the Disclosure & Barring Service (DBS) for the purpose of checking at an enhanced level of disclosure for the

existence of any criminal convictions subject to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) or other relevant legislation and that the appropriate check of the Children's Barred List relating to the protection of children.:

4. 4 The Supplier will comply with the requirements of the Safeguarding of Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012 and any other subsequent relevant legislation) in respect of such employees and volunteers that work in a Regulated Activity.

4. 5 The Supplier will ensure that all enhanced checks for a Regulated Activity including the appropriate barred list check or checks are renewed every three years.

4.6 The Supplier will not employ any person or continue to employ any person to provide the Regulated Activities who is prevented from carrying out such activities under the Safeguarding of Vulnerable Groups and will notify the Council immediately of any decision to employ such person in any role in connection with the Contract or any other agreement or arrangement with the Council.

4.7 The Supplier undertakes to ensure that they shall adhere to and comply with any guidelines and/or codes of practice issued by the Council when selecting and/or recruiting personnel who may have substantial and/or unsupervised access to children and vulnerable adults.

4.8 Where the provision of the Services does not require any of the Supplier's employees or volunteers to work in a Regulated Activity but where the Supplier's employees or volunteers may nonetheless have contact with children and/or vulnerable adults the Supplier will in respect of such employees and volunteers:

4.8.1 carry out Employment Checks; and

4.8.2 carry out such other checks as may be required by the DBS from time to time throughout the Term

4.9 Neither the Supplier nor any sub-contractors are to have direct contact with children and/or vulnerable adults during any delivery or attendance at the premises of the Council. The Supplier shall ensure that those engaged in undertaking the duties under the Contract, including employees, servants, agents, volunteers and others are of suitable standing and good character.

4.10 The Supplier shall provide details of employee disciplinary and grievance procedures and other policies, which the Council may request from time to time.

## **5. PRICE**

5.1 In return for the Supplier providing the Services, the Council shall pay the Supplier the Price.

5.2. The Price of the Services shall be as stated in the Purchase Order and/or the Tender and, unless otherwise so stated, shall be exclusive of any applicable Value Added Tax but inclusive of all other charges.

5.3. No variation in the Price nor extra charges shall be made without the Council's prior written consent.

5.4. The Supplier hereby agrees that it shall be solely responsible for payment of all income tax liabilities whatsoever and national insurance or similar contributions in relation to its employees

## **6. PAYMENT**

6.1. The Supplier shall invoice the Council with the Price on or at any time after performance of the Services to the Council's satisfaction and each invoice shall include the Purchase Order number, invoice number and the invoice amount must be stated in pounds sterling (£).

6.2. The Supplier must submit all invoices electronically via XML or the Council Authorised Web Portal. In the event Electronic submission is not possible the Supplier may, with prior approval of the Council, submit invoices to:

Surrey County Council  
Shared Services Accounts Payable Team  
Room 218  
County Hall  
Penrhyn Road  
Kingston  
KT1 2DW

6.3. Unless otherwise stated in the Purchase Order and/or Tender, the Council shall pay the Price for the Services by BACS (unless otherwise agreed in writing) within 30 days of receipt by the Council of a proper invoice following successful performance of the Service in accordance with the Purchase Order and/or Tender.

6.4. Without prejudice to any other right or remedy, the Council reserves its right to set-off against its indebtedness to the Supplier any debt owed to it by the Supplier and any liabilities, damages, losses, costs, charges and expenses which it has incurred as a consequence of any breach by the Supplier of this Contract or any other contract with the Council.

## **7. TIME OF PERFORMANCE**

7.1. The Supplier shall perform the Services for the Term.

7.2. Time is of the essence of the Contract.

## **8. VARIATION**

8.1. The Council may instruct the Supplier to vary the Services or provide services additional to the Services listed in the Purchase Order or the Specification and all such varied and/or additional Services shall be performed in accordance with this Contract. The Council shall pay the Supplier an amount to be calculated as below for such additional services.

8.2. If requested by the Council, the Supplier shall supply a detailed statement estimating the effects of the varied services on any agreed program, the time implications on performance of the Services and impact on the Price.

8.3. The parties shall attempt to agree a fair and reasonable adjustment to the Price and in the absence of any such agreement any change to the Price shall be calculated by reference to the time reasonably and properly spent in accordance with any pre-agreed hourly rates set out in the Purchase Order, including a reasonable amount for the management time spent in providing the additional services.

8.4. The Supplier shall not be entitled to any additional remuneration where and to the extent such variation and/or additional services were necessitated, in whole or in part, by any negligence, omission or default by or on the Supplier's behalf.

8.5. Notwithstanding any other provisions of clause 8, the Supplier shall not vary the Services or provide any additional services without the Council's prior written instructions. In the event the Supplier does vary the Services or provides additional services, The Council shall not incur any liability for payment of such variation

## **9. AUDIT AND CORRUPT GIFTS OR PAYMENTS**

9.1. The Supplier shall keep and maintain records for 6 years after the end of the contract of the money the Council paid to it.

9.2. The Supplier shall not offer or give, or agree to give, to any officers or representative of the Council any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Council or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The Suppliers attention is drawn to the criminal offences created by the Bribery Act 2010 .

## **10. INDEMNITY & INSURANCE**

10.1 The Supplier shall keep The Council indemnified in full against all direct, indirect or consequential liabilities (all of which include, without limitation, project delays, loss of business, depletion of goodwill and like loss), other liabilities, damages, injury, costs and expenses (including legal and other professional fees and expenses) incurred and/or paid by the Council as a result of or in connection with:-

10.1.1. Defective workmanship, quality or materials;

10.1.2. Any infringement or alleged infringement of any intellectual property rights caused by the use, or supply of the Services; and

10.1.3. any claim made against the Council in respect of any liability, loss, damage, injury, cost or expense sustained by Council employees or agents or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Supplier.

10.2. The Supplier hereby warrants to the Council that the Supplier undertakes to ensure that they shall have in force all necessary insurance cover for any one occurrence or series of occurrences arising out of the provision of the Service. Including public liability insurance with a minimum limit of liability of not less than £5,000,000. The Supplier undertakes to the Council to ensure that they maintain such insurance cover during the term of the Contract.

10.3. As and when reasonably required to do so, the Supplier shall provide the Council with documentary evidence that the insurance required under this condition is in force and is being maintained.

## **11. CONFIDENTIALITY**

11.1 The Supplier shall keep in strict confidence all documents, information technical and/or commercial know-how, specifications, inventions, processes and initiatives which are of a confidential nature and have been disclosed to the Supplier by the Council or the Council's agents and any other confidential information concerning the Council's business or services which the Supplier may obtain or be made aware of, and the Supplier shall restrict disclosure of such confidential material to such of the Suppliers employees or agents as need to know the same for the purpose of discharging the Suppliers obligations to the Council and shall ensure that such employees or agents are subject to like obligations of confidentiality as bind the Supplier.

## **12. COUNCIL PROPERTY**



12.1 All property (including land and buildings), materials, equipment, tools, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Council to the Supplier or not so supplied but used by the Supplier specifically in the manufacture or development of the Services shall at all times be and remain the Council's exclusive property but shall be held by the Supplier in safe custody at the Supplier's risk and maintained and kept in good condition by the Supplier until returned to the Council and shall not be disposed of other than in accordance with the Council's written instructions, nor shall such items be used otherwise than as authorised by the Council in writing.

### **13. TERMINATION**

13.1 The Council shall be entitled to cancel the Purchase Order or terminate the Contract in respect of all or part only of the Services by giving notice to the Supplier one month prior to delivery of the Service, in which event the Council shall not be liable for payment for Services not performed, loss of anticipated profits or any consequential loss.

13.2. The Council shall be entitled to terminate the Contract immediately without liability if:

13.2.1 The Supplier commits a material breach of any of the terms and conditions of the Contract;

13.2.2 the Supplier has a bankruptcy order made against it or has made an arrangement with its creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors or (being a body corporate) has convened a meeting of creditors or enters into liquidation or has a receiver or an administrative receiver appointed or is the subject of similar procedures under the law of any other state or a resolution is passed or a petition presented to any court for the Suppliers winding up, or for the granting of an administration order, or any proceedings are commenced relating to the Supplier's insolvency or possible insolvency;

13.2.3 The Supplier ceases or threatens to cease to carry on business;

13.2.4 The Council reasonably apprehends that any of the events mentioned above are about to occur, or

13.2.3 In the Council's opinion the Supplier has abandoned the Contract.

13.3. Following termination under clause 13, without prejudice to any other rights, the Council may complete the Services or have them completed by a third party, using all materials, plant and equipment on the Premises belonging to the Supplier, and the Council shall not be liable to make any further payment to the Supplier until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Supplier the costs incurred by the Council (including the Council's costs). If the total cost to the Council exceeds the amount (if any) due to the Supplier, the difference shall be recoverable by the Council from the Supplier.

## **14. SUBSTITUTE SUPPLIER**

14.1 The Council may engage a substitute Supplier if:

14.1.1 The Supplier fails to deliver the Service within the timescales or standard set out in the Purchase Order and/or the Specification; or

14.1.2 In the reasonable opinion of the Council the Supplier has failed to allocate sufficient resources to perform the Service.

14.2 Where the Council engages a substitute supplier, the Council must notify the Supplier in respect of the Supplier's failure and raise a Purchase Order with a substitute supplier of the Council's choice to supply the Service.

14.3 Where the Council has notified the Supplier in accordance with clause 14.2 the Council may recover from the Supplier any costs, damages or expenses incurred by the Council because of the failure of the Supplier together with any costs or expenses over and above the amount which the Council had originally agreed to pay to the Supplier for the supply of the Service.

## **15. SUSTAINABLE PROCUREMENT AND EQUALITY**

15.1 The Council is committed to purchasing sustainable products, works and services wherever possible. The Council will give appropriate weighting to sustainable products, works and services in the purchasing process.

15.2 The Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Council's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

15.3 The Supplier will perform the services in a manner that gives appropriate regard to the protection of the natural environment. The Supplier will comply with all environmentally related legislation and codes of practices relating to the products and services being offered.

15.4 The Supplier will ensure any opportunities for improvement in the Council's environmental performance, identified by the Supplier's employees or subcontractors are reported to the relevant Council Officer.

15.5 The Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Legislation or any other law, enactment, order or regulation relating to discrimination on such grounds as age, race, gender, religion, disability, sexual orientation, , or otherwise. The Supplier shall ensure compliance with this clause by all its employees and volunteers in the performance of the Services.

## **16 DATA SECURITY**

16.1 The Supplier and the Council shall each comply with their respective obligations under the Data Protection Act 1998 and other applicable statutory provisions or provision of any European directive in respect of data and records containing personal information. Making Surrey a better place

16.2 The Supplier shall ensure that all data in relation to the Services is securely stored and managed through effective policies, procedures and training. This will include but will not be limited to ensuring all data is password protected, challenging unknown individuals on your premises and ensuring all paper files are securely stored in a locked location out of hours.

16.3 The Supplier shall ensure that Council data in relation to named individuals or employees is never left in an unattended vehicle and that all SCC data on mobile devices (e.g. laptops, mobile phones, USB memory sticks) is encrypted.

16.4 The supplier shall not transmit, or exchange data by any other means, unless previously agreed with the Council and ensure that SCC data is no held longer than required and disposed of properly and securely.

## 17. GENERAL

17.1 The Supplier acknowledges that the Council is subject to the Best Value duty imposed on the Council by Part 1 of the Local Government Act 1999 and Supplier shall throughout the Term assist the Council in discharging the Best Value duty by actively promoting, supporting and assisting the Council in meeting its Best Value duty in respect of the Service

17.2 The Supplier recognises that the Council is subject to legal duties which may require the release of information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 or any other applicable legislation or codes governing access to information and that the Council may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this contract. The Supplier will assist the Council to enable the Council to comply with its obligations under the Freedom of Information Act 2000 or other applicable legislation governing access to information. The Supplier will respond to any such request for assistance from the Council at its own cost and promptly and in any event within 5 working days of receiving the Council's request.

17.3 The Supplier acknowledges that the Council has a duty under the Counter-Terrorism and Security Act 2015 ("CTSA") to have due regard to the requirement to prevent people from being drawn into terrorism. The Supplier shall facilitate the Council's compliance with its duty pursuant to the CTSA and the Supplier shall have regard to the statutory guidance issued under section 29 of the CTSA and in particular the Provider shall ensure that its staff engaged in delivering services understand what radicalisation means and why people may be vulnerable to being drawn into terrorism and are aware of extremism and the relationship between extremism and terrorism. Where the Provider identifies or suspects that someone may be engaged in illegal terrorist related activity, the Provider must refer such person or activity to the police.

17.4 The Supplier shall allow persons nominated by the Council access to all management records and documents in the possession of the Supplier in connection with the performance of this contract, including all accounting records and financial information in the possession, custody or control of the Supplier or the Supplier's auditors

17.5 Where this Contract requires the Supplier to make payments or collect income on behalf of the Council, the Director of Finance's rights of audit shall be reserved as if the Supplier was an employee of the Council

17.6 The Supplier shall not be entitled to assign the Contract or any part of it or sub-contract any of its obligations without the Council's prior written consent.

17.7 The Council reserve the right to defer the date of delivery or payment or to cancel the Contract or reduce the Service ordered if the Council are prevented from or delayed in the carrying on the project or business for which the Service is required due to circumstances beyond the Council's reasonable control.

17.8 Any waiver by the Council of any breach of, or default under, the Contract by the Supplier shall not be considered as a waiver of any subsequent breach of the Contract.

17.9 Failure or delay by The Council in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of the Council's rights under the Contract.

17.10 If any provision of the Contract is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall continue in full force and effect.

17.11 The Contract shall be subject to English Law in all respects (including formation) and shall be construed and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England.

17.12 This document supercedes all prior agreements of whatever nature and prevails over any other terms and conditions including but not limited to any standard conditions printed and/or contained on any invoice or quotation submitted by the Supplier

## **18. FORCE MAJEURE**

18.1 If a Force Majeure event arises on or following the date of this Contract which directly causes the Supplier to be materially unable to comply with any of its obligations hereunder, the Supplier and the Council may agree such terms as are appropriate for the continued performance of the Contract. If no such terms are agreed within one month of the commencement of the said event, and such event is continuing or its consequence remains such that the Supplier is materially unable to comply with its obligations, the Parties hereby agree that the Contract shall thereupon terminate, subject to the provisions of **Condition 13** (Termination). Failure by the Supplier to comply with its contractual obligations by reason of a Force Majeure event shall not constitute a breach of contract.

18.2 The events which are to be classified as Force Majeure events shall include each of the following:

18.2.1 war, civil war, conflict or terrorist attack arising within and affecting the United Kingdom;

18.2.2 nuclear, chemical or biological contamination of the Supplier's property arising from any of the events at (a) above;

18.2.3 riot, flood or earthquake;

18.2.4 pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; or

18.2.5 any circumstances beyond the reasonable control of either of the Parties.