

Terms and Conditions for the Supply of Services.

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 West Sussex County Council of County Hall, Chichester, West Sussex, PO19 1RQ;
- "Employee Liability Information"** means the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE;
- "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;
- "GDPR"** means the General Data Protection Regulation (EU) 2016/79, the Data Protection Act 2018 and any subordinate legislation deriving;
- "Purchase Order"** means the purchase order generated (where applicable) by the Council 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 or vulnerable adults within the meaning of Schedule 4 Part 1 and Part 2 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 Services;
- "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 Services are 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 the 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. performs the Services 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 this 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 the 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 the Contract shall impose any liability on the Council in respect of any liability incurred by the Supplier to any other person. This clause 3.3 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 the 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 this 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 clause 3.4 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 or on the Premises will be final and conclusive.
- 3.7. The Supplier shall bear the cost of any notice, instruction or decision of the Council under the 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 and will comply with all Council policies and procedures as identified.
- 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 Services the Supplier shall leave the Premises in a neat and tidy condition.
- ## 4. THE SUPPLIERS PERSONNEL
- 4.1. The Service Provider shall ensure that all individuals employed or engaged in connection with the Services are of suitable character and are appropriately qualified, trained and experienced in the area of work which they are to perform.
- 4.2. The Service Provider shall ensure that there are at all times an adequate number of individuals employed or engaged to provide the Services in accordance with the Contract.
- ## 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 in pounds sterling (£) and shall include;
- 6.1.1. an invoice date and invoice number;
- 6.1.2. the period to which the invoice relates;
- 6.1.3. the aspects of the Services for which payment is claimed;
- 6.1.4. any VAT payable, with a breakdown showing the net figure, the VAT amount and the gross figure;
- 6.1.5. a VAT registration number if VAT registered;
- 6.1.6. a valid purchase order number as issued by the Council;
- 6.1.7. the Service Provider's vendor/supplier number as set out in the purchase order issued by the Council;
- 6.1.8. the Service Provider's full business name and address; and
- 6.1.9. the name and address of the Council.
- 6.2. The Supplier must submit all invoices electronically via email to ctg.invoicing@westsussex.gov.uk and shall:
- 6.2.1. add the word 'Invoice' in the email subject field,
- 6.2.2. make sure it contains a valid Purchase Order number; and
- 6.2.3. add it as an attachment in PDF or TIFF format.
- 6.3. In the event electronic submission is not possible the Supplier may, with prior written notice to the Council, submit invoices to:
- Capita WSCCAP, PO Box 312, Faverdale Industrial Estate, Darlington, DL98 1AD.*
- 6.4. 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 Services in accordance with the Purchase Order and/or Tender.
- 6.5. The Council shall advise the Service Provider in writing of any discrepancy between the amount stated in the invoice and the amount properly due to the Service Provider. The Service Provider shall reissue the invoice showing the correct amount within seven (7) days of such notification.
- 6.6. 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 the Contract or any other contract with the Council.
- ## 7. VARIATION
- 7.1. No Variation of the Contract shall be effective unless it is in writing and signed by the Parties (or their duly authorised senior representatives).
- 7.2. Unless the Variation expressly provides for an increase in payment, the Contract Price shall not be increased as a result of a Variation.
- ## 8. AUDIT AND CORRUPT GIFTS OR PAYMENTS
- 8.1. The Supplier shall keep and maintain records for 6 years after the end of the Contract of the money the Council paid to it.
- 8.2. 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

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- created by the Bribery Act 2010, section 117(2) of the Local Government Act 1972 and the offences listed in regulation 57(1) of the Public Contracts Regulations 2015.
- 9. INDEMNITY & INSURANCE**
- 9.1. 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:-
- 9.1.1. defective workmanship, quality or materials;
- 9.1.2. any infringement or alleged infringement of any intellectual property rights caused by the use, or supply of the Services; and
- 9.1.3. 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.
- 9.2. 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 Services, including public liability insurance with a minimum limit of liability of not less than £10,000,000 and (save where a statutory exemption applies) Employer's liability 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.
- 9.3. As and when reasonably required to do so, the Supplier shall provide the Council with documentary evidence that the insurance required under this clause 10 is in force and is being maintained.
- 10. CONFIDENTIALITY**
- 10.1. 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.
- 11. COUNCIL PROPERTY**
- 11.1. 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.
- 12. TERMINATION**
- 12.1. 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 Services, in which event the Council shall not be liable for payment for Services not performed, loss of anticipated profits or any consequential loss.
- 12.2. The Council shall be entitled to terminate the Contract immediately without liability if:
- 12.2.1. the Supplier commits a material breach of any of the terms and conditions of the Contract;
- 12.2.2. 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 Supplier's winding up, or for the granting of an administration order, or any proceedings are commenced relating to the Supplier's insolvency or possible insolvency;
- 12.2.3. the Supplier ceases or threatens to cease to carry on business;
- 12.2.4. the Council reasonably apprehends that any of the events mentioned above are about to occur;
- 12.2.5. in the Council's opinion the Supplier has abandoned the Contract; or
- 12.2.6. the Supplier, their employee or anyone acting on their behalf corruptly offers, gives or agrees to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Supplier does not know this has been done), or commits an offence under the Bribery Act 2010, Section 117(2) of the Local Government Act 1972 or as listed in regulation 57(1) of the Public Contracts Regulation 2015.
- 12.3. 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.
- 13. SUBSTITUTE SUPPLIER**
- 13.1. The Council may engage a substitute Supplier if:
- 13.1.1. the Supplier fails to deliver the Services within the timescales or standard set out in the Purchase Order and/or the Specification; or
- 13.1.2. in the reasonable opinion of the Council, the Supplier has failed to allocate sufficient resources to perform the Services.
- 13.2. 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 Services.
- 13.3. 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 Services.
- 14. TUPE**
- 14.1. The parties acknowledge that upon the expiry or termination of the Contract, the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) ("TUPE"), as amended may apply.
- 14.2. The Supplier agrees to provide the Council with the Employee Liability Information set out in regulation 11(2) of TUPE and any other information reasonably required by the Council within 21 days of receipt of request.
- 14.3. The Supplier indemnifies the Council and any replacement provider for any inaccurate information provided as a result of the application of TUPE.
- 15. DATA PROTECTION**
- 15.1. The Council shall be the Data Controller (as defined in the GDPR) and the Supplier shall be a Data Processor (as defined in the GDPR). The Data Processor must act only on the written instructions of the Council as Data Controller. The Supplier must only engage a sub Data Processor as a subcontractor with the prior written consent of the Council and under a written contract between the Data Processor and the sub Data Processor.
- 15.2. Both the Council as Data Controller and the Supplier as Data Processor shall maintain a record of the type of Personal Data (as defined in the GDPR) held and the reasons for processing it under the Contract.
- 15.3. The Supplier shall ensure that persons processing the Personal Data on their behalf are subject to a duty of confidence and do not disclose Personal Data to any third parties other than to its employees and authorised sub-contractors to whom such disclosure is reasonably necessary in order for the Supplier to supply the Services and/or Goods;
- 15.4. Where the Supplier processes Personal Data as a necessary part of supplying the Services and/or Goods, the Supplier shall take appropriate technical and organisational security measures to ensure the security of processing against unauthorised or unlawful processing of Personal Data and accidental loss or destruction of or damage to Personal Data and inform the Council, or on request supply written particulars of the measures taken.
- 15.5. The Supplier shall indemnify and keep indemnified the Council against all actions, claims, costs, damages, deductions, expenses losses and liabilities incurred by the Council as Data Controller in respect of any breach by the Supplier of its obligations under this Clause 16.
- 15.6. The Supplier as Data Processor must assist the Council as Data Controller in providing Subject Access (as defined in the GDPR) and allowing Data Subjects (as defined in the GDPR) to exercise their rights under the General Data Protection Regulation.
- 15.7. The Supplier as Data Processor must assist the Council as Data Controller in meeting its GDPR obligations in relation to the security of processing, the notification of Personal Data Breaches (as defined in the GDPR), and Data Protection Impact Assessments (as referred to in Article 35 of the GDPR).
- 15.8. The Supplier as Data Processor must submit to audits and inspections, provide the Council as Data Controller with whatever information it needs to ensure that the Supplier is meeting its Data Processor obligations, and tell the Council immediately if it is asked to do something infringing the GDPR.
- 15.9. Nothing in the Contract relieves the Data Processors of their own direct responsibilities under the GDPR.
- 15.10. The Supplier shall comply with the provisions of the GDPR and will indemnify the Council against all actions costs expenses claims proceedings and demands which may be made or brought against the Council for breach of statutory duty which arises from the use of disclosure or transfer of Personal Data by the Supplier.
- 15.11. At the end of the Contract, the Data Processor shall as the Council requests delete, or return, all Personal Data to the Council.
- 15.12. The Data Processor must, where requested, co-operate with the Information Commissioner's Office.
- 15.13. The Data Processor shall keep records of data processing activities (as defined in the GDPR).
- 15.14. The Supplier shall inform the Council promptly (and in any event within 24 hours) if any data or information related to the provision of the Contract is subject to unauthorised access, goes missing, is lost in error or is believed to have been lost or stolen, regardless of whether it was stored securely or otherwise.
- 15.15. The Supplier shall designate a person as their Data Protection Officer.
- 16. GENERAL**
- 16.1. 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.

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- 16.2. 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 the 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 Services.
- 16.3. 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 the 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.
- 16.4. 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.
- 16.5. 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 the Contract, including all accounting records and financial information in the possession, custody or control of the Supplier or the Supplier's auditors.
- 16.6. Where the Contract requires the Supplier to make payments or collect income on behalf of the Council, the Director of Finance (or equivalent) rights of audit shall be reserved as if the Supplier was an employee of the Council.
- 16.7. 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.
- 16.8. The Council reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the Services ordered if the Council is prevented from or delayed in the carrying on the project or business for which the Services are required due to circumstances beyond the Council's reasonable control.
- 16.9. 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.
- 16.10. 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.
- 16.11. 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.
- 16.12. 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.
- 16.13. This document supersedes 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.
- 16.14. In performing its obligations under the agreement, the Supplier shall:
- Comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including but not limited to the Modern Slavery Act 2015;
 - Not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
 - Include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause 16.14; and
 - Notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this contract.
17. **FORCE MAJEURE**
- 17.1. If a Force Majeure event (as described in clause 17.2) arises on or following the date of the 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 Clause 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.
- 17.2. The events which are to be classified as Force Majeure events shall include each of the following:
- 17.2.1. war, civil war, conflict or terrorist attack arising within and affecting the United Kingdom;
 - 17.2.2. nuclear, chemical or biological contamination of the Supplier's property arising from any of the events at (a) above;
 - 17.2.3. riot, flood or earthquake;
 - 17.2.4. pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; or
 - 17.2.5. any circumstances beyond the reasonable control of either of the parties.
18. **SAFEGUARDING**
- 18.1. Where the Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006, the Supplier shall:
- 18.1.1. ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service ("DBS Check");
 - 18.1.2. monitor the level and validity of the checks under this Clause 18.1.1 for each member of staff;
 - 18.1.3. not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users;
 - 18.1.4. ensure that their staff know how to report a safeguarding concern.