

SUPPLY OF SERVICES

GENERAL TERMS AND CONDITIONS OF CONTRACT

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This Agreement is made this day of 20[]

BETWEEN:

(1) EASTLEIGH BOROUGH COUNCIL of Eastleigh House, Upper Market Street, Eastleigh, Hampshire, SO50 9YN ("the Council")

and

(2) [] of [] OR [Company Number [] and whose registered offices is at [] ("the Supplier"),

1 DEFINITIONS

In this Agreement unless the context otherwise requires the following definitions shall apply.

“Authority” means Eastleigh Borough Council and where the context permits, reference to the Authority shall include reference to an employee of the Authority.

“Price” means the price or rate for the Services stated in the Purchase Order.

“Key Personnel” means any person named on the Purchase Order as key personnel or any person who the Authority notifies the Supplier is to be regarded as a key personnel during the course of the Services.

“Services” means the services described in the Purchase Order.

“Order Number” means the unique number that appears on the Purchase Order.

“Parties” means both the Authority and the Supplier.

“Premises” means any land or building where the Services are to be performed specified in the Purchase Order.

“Purchase Order” means an order for the Services served by the Authority on the Supplier which includes a description of the Services, the price or rate applicable to the Services and any specific terms applying to the Services which are additional to these standard Terms and Conditions.

“Terms and Conditions” means these terms and conditions for the supply of Services.

2 GENERAL

- 2.1 These Terms and Conditions together with the relevant Purchase Order and any other document, plan or specification referred to in the Purchase Order constitute the contract between the Parties for the Services (“the Contract”).
- 2.2 In the event of any conflict between a clause in these Terms and Conditions and the Purchase Order, the Purchase Order shall prevail.
- 2.3 The Contract constitutes the entire agreement between the parties relating to the Services and replaces all previous negotiations, agreements, understandings and representations whether oral or in writing. However nothing in this Contract shall limit or exclude any liability for personal injury, death or fraud.
- 2.4 Nothing in this Contract shall have the effect of making the Supplier an agent, servant or employee of the Authority.

3 THE SERVICES

- 3.1 The Supplier shall provide the Services set out in the Purchase Order.
- 3.2 The Supplier shall perform the Services:
 - 3.2.1 with reasonable care and diligence expected of someone with the Supplier’s skill and knowledge;
 - 3.2.2 in accordance with industry best practice and using the best available techniques and standards;
 - 3.2.3 using staff who have appropriate skills, qualifications and experience;
 - 3.2.4 using the appropriate number of staff; and
 - 3.2.5 to the reasonable satisfaction of the Authority.
- 3.3 The Supplier shall provide all plant, equipment and materials necessary for the performance of the Services except as otherwise agreed with the Authority. All plant, equipment and materials shall be at the Supplier’s risk. The Price shall include the costs of haulage of plant, equipment and material to the Authority’s Premises and their removal after the Services are complete.
- 3.4 The Supplier shall not place or cause to be placed any orders with third parties or otherwise incur any liabilities to third parties in the name of the Authority without the prior written consent of the Authority..

4 TIME OF PERFORMANCE

- 4.1 The Supplier shall carry out the Services for the period and/or in accordance with the timescales set out in the Purchase Order. In the event that the Purchase Order does not specify any timescales, the Supplier shall comply with any timescales notified by the Authority and agreed with the Supplier.

- 4.2 The Authority may by written notice require the Supplier to execute the Services in such order as the Authority may reasonably decide. In the absence of such notice the Supplier shall submit such a detailed programme of work and progress reports as the Authority may from time to time require.
- 4.3 The Supplier shall notify the Authority immediately if it becomes aware of any event that it believes is likely to delay or impede the performance of the Services.
- 4.4 In the event that the Supplier fails to meet a date or dates set out in the Purchase Order it shall, on the request of the Authority, and without prejudice to the Authority's other rights and remedies, arrange to provide all such additional resources as are necessary to fulfil its obligations at no additional cost to the Authority.

5 REJECTION OF SERVICES

- 5.1 The Authority may at any time give notice of the Supplier's default in performing the Services or anything delivered as part of the Services which in the reasonable opinion of the Authority does not comply with the Purchase Order or these Terms and Conditions in any material way.
- 5.2 If the Authority gives notice under Condition 5.1 above, it shall give the reasons for such default in its notice.
- 5.3 Following receipt of such notice, the Supplier shall have 5 (five) working days (or such other period as the Parties may agree in writing) during which the Supplier shall correct the faults which caused the notice to be issued.
- 5.4 If the Supplier fails to correct the faults to the reasonable satisfaction of the Authority within 5 (five) working days, the Authority shall be entitled to terminate this Contract or any part of the Services.
- 5.5 The Supplier shall remove and/or re-execute or deliver (at the choice of the Authority) any work that has been rejected by the Authority.
- 5.6 The Authority may require the immediate removal from its Premises of anything delivered by the Supplier which in the reasonable view of the Authority, is hazardous or noxious. The Supplier shall comply with any such request at its own expense.

6. SUPPLIER'S PERSONNEL

- 6.1 The Supplier shall make Key Personnel available for the purposes of the Services and shall not make any changes in the Key Personnel without the prior written approval of the Authority.
- 6.2 If and when requested by the Authority, the Supplier shall provide the Authority with a list of the names and addresses of any person being used in the Services specifying, in each case, the capacities in which they are involved and giving such

other particulars and evidence of identity and other supporting evidence as the Authority may reasonably require.

- 6.3 The Supplier shall comply with any notice reasonably given by the Authority stating that a person named in the notice is not to be involved any further in the provision of the Services. The Supplier shall replace any such person with someone of equivalent skills and qualifications.
- 6.4 The Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of any act of parliament relating to discrimination in employment. The Supplier shall take all reasonable steps to secure the observance of these provisions by all servants, sub-contractors or agents of the Supplier.

7. SECURITY AND USE OF AUTHORITY'S PREMISES

- 7.1 Where the Services are being carried out at Premises owned or occupied by the Authority:
- 7.1.1 the Supplier shall comply and shall ensure that its staff, sub-contractors and agents comply with any rules or regulations applied by the Authority in relation to security at its premises;
- 7.1.2 the Supplier shall comply with any notice given by the Authority stating that a person named in the notice is to be removed from the Premises and/or not deployed any further in the provision of the Services. The Supplier shall ensure that the person is replaced by someone of at least equivalent skills and qualifications. The decision of the Authority on whether someone may be admitted to its Premises is final. The Supplier shall bear the cost of complying with such a notice.
- 7.1.3 The Supplier shall keep the Premises reasonably clean and tidy while the Services are being performed and shall leave them clean and tidy on completion.
- 7.1.4 The Supplier shall pay the costs of making good any damage to the Premises (and any fixtures and fittings of the Premises) done by its employees, agents or sub-Suppliers other than fair wear and tear.
- 7.1.5 The Supplier shall occupy the Premises as a licensee.
- 7.1.6 The Supplier shall co-operate with any other person, firm or company which is providing services to the Authority at the same time as the Supplier.

8. PAYMENT

- 8.1 In consideration of the carrying out of the Services by the Supplier the Authority shall pay the Supplier the Price.
- 8.2 The Supplier shall submit an invoice for the Services to the Authority's address for invoices given in the Purchase Order. The invoice shall contain the Order Number and a description of the Services carried out and the Price payable.

- 8.3 The Authority shall pay the Supplier within 30 days of receipt and agreement of its invoice. The Supplier shall submit its invoice monthly in arrears for work completed to the satisfaction of the Authority unless such other payment process is agreed between the Parties.
- 8.4 In addition to the Price, the Authority shall pay the Supplier a sum equivalent to any Value Added Tax chargeable in respect of the Services if applicable. Value Added Tax shall be shown as a separate item on the Supplier's invoice.
- 8.5 The Supplier shall implement any legislative requirement to account for goods and services in euro instead of or as well as sterling at no cost to the Authority. The Authority shall provide all reasonable assistance to facilitate any such requirement.

9 RECOVERY OF SUMS DUE

- 9.1 If any sum is recoverable from or payable by the Supplier under this Contract, that sum may be deducted from any sum then due or which at a later date becomes due to the Supplier under this Contract or under any other agreement with the Authority.

10 AUDIT

- 10.1 The Supplier shall keep and maintain until two years after this Contract has been completed, records to the satisfaction of the Authority of all expenditures that are reimbursable by the Authority. These records shall include records of the hours worked and costs incurred by the Supplier or any employees of the Supplier in connection with the Services. The Supplier shall on request afford the Authority or any person reasonably specified by the Authority such access to those records as may be required by the Authority in connection with the Contract.

11 INTELLECTUAL PROPERTY

- 11.1 The intellectual property rights (including the copyright) in any reports, documentation or materials produced as part of the Services are hereby assigned to and shall vest in the Authority and the Supplier grants the Authority an irrevocable, non-exclusive and royalty free right to use such material as it requires. This condition shall survive the termination of this Contract.
- 11.2 Save where the Services uses documentation and materials supplied by the Authority, the Supplier warrants that none of the documentation and materials used or created as part of the Services shall infringe any patent, trade mark, registered design, copyright or other rights in industrial property of any third party.
- 11.3 The Supplier shall indemnify the Authority against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and Authority basis) which the Authority may incur as a result of or in connection with any breach of clause 11.2.

12 HEALTH AND SAFETY

- 12.1 The Supplier shall notify the Authority of any health and safety hazards which may

arise in connection with the performance of this Contract.

- 12.2 Where the Services are being carried out at land or premises owned or occupied by the Authority, the Authority shall notify the Supplier of any health and safety hazards which may exist or arise at its premises and which may affect the Supplier. The Supplier shall draw these hazards to the attention of its employees, sub-suppliers or agents who may be affected by them and instruct such persons in connection with any necessary safety measures.

13 CONFIDENTIALITY

- 13.1 The Supplier undertakes to keep secret and not to disclose and to procure that its employees, subcontractors and agents keep secret and do not disclose any information of a confidential nature which it has obtained by reason of this Contract. Nothing in this clause applies to information which is already in the public domain or the possession of the Supplier other than by reason of breach of this clause.
- 13.2 The provisions of this Condition shall survive the termination of this Contract however that occurs.

14 INDEMNITY AND INSURANCE

- 14.1 Without prejudice to any rights or remedies of the Authority the Supplier shall indemnify the Authority against all actions, demands, losses, expenses and costs (including legal costs on a solicitor and client basis) which the Authority may suffer or incur as a result of or in connection with any damage to property or any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Services or any negligence or breach of this Contract by the Supplier.
- 14.2 The Supplier warrants that it has in place with a reputable insurance company a policy or policies of insurance covering all the indemnities under this Contract in such sums as agreed with the Authority. At the request of the Authority the Supplier shall produce the relevant policy of insurance together with evidence of payment of its latest premium.

15 CHANGE CONTROL

- 15.1 This Contract may not be varied or amended unless the variation or amendment is in writing and agreed by both the Authority and the Supplier.
- 15.2 The price for any variation (if applicable) shall be the fair and reasonable price taking into account the market price available to the Authority for similar services. The Supplier shall supply the Authority with all information necessary to allow the Authority to ascertain whether the price is fair and reasonable.
- 15.3 If any change is agreed to anything included on the Purchase Order the Authority reserves the right to issue a replacement Purchase Order. These terms and conditions shall apply to any replacement purchase order as if it were the original Purchase Order.

16 ASSIGNMENT OR SUB-CONTRACTING

- 16.1 The Supplier shall not assign or sub-contract any part of the Services without the written consent of the Authority.
- 16.2 No sub-contracting of this Contract shall in any way relieve the Supplier of its obligations under the Contract.
- 16.3 Where the Supplier enters a sub-contract for the purpose of performing this Contract it shall ensure that the sub-contract has a term requiring the Supplier to pay the sub-contractor within 30 days of receipt of a valid invoice.

17 RIGHTS OF THIRD PARTIES

This Contract shall not create any rights which are enforceable by anyone other than the Parties.

18 TERMINATION

- 18.1 The Supplier shall notify the Authority in writing immediately upon the occurrence of any of the following events:
- a) (where the Supplier is an individual) if a petition is presented for the Supplier's bankruptcy or a criminal bankruptcy order is made against the Supplier, or the Supplier makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs;
 - b) (where the Supplier is a firm; or a number of persons acting together in any capacity) if any event in (a) or (c) of this clause occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or
 - c) where the Supplier is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.
- 18.2 The Authority shall be entitled to terminate this Contract by notice to the Supplier with immediate effect if:
- a) any of the events described in clause 18.1 occur;
 - b) the Supplier has committed a material breach of this Contract and (if such breach is capable of remedy) has failed to remedy such breach within thirty days of being required by the Authority in writing to do so; or
 - c) (where the Supplier is an individual), if he shall die or be adjudged Incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983.

- 18.3 The Authority shall be entitled to terminate this Contract at any time by giving to the Supplier not less than thirty days' notice to that effect.

19 NOTICES

- 19.1 Any notice or other communication given under or pursuant to this Contract must be given in writing and must be delivered in person or sent by post. Communications must be sent to the address for communications given in the Purchase Order (which may be altered at any time by the altering Party giving the other Party 15 days notice of a changed address). Communications to the Authority must be sent to its address given for the buyer contact on the Purchase Order and not its address for invoices.
- 19.2 A notice or communication shall be deemed to have been received 2 working days after posting in the case of first class delivery and 4 working days after posting in the case of second class delivery unless the receiving party proves otherwise.

20 GOVERNING LAW

- 20.1 Unless the Purchase Order specifies otherwise, this Contract shall be governed by and construed in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

21 BRIBERY AND CORRUPTION

The Authority may cancel the contract and recover from the Supplier the amount of any loss resulting from such cancellation if:

- 21.1 the Supplier shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract, with the Authority or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Authority or
- 21.2 the like acts shall have been done by any person in the employ or on behalf of the Supplier (whether with or without the Supplier's knowledge, or
- 21.3 in relation to any contract with the Authority the Supplier or any person in the employ of or acting on the Supplier's behalf shall have committed any offence under the Bribery Act 2010, or shall have given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972.

22 DATA PROTECTION

- 22.1 In this section, the following definitions shall apply –

“GDPR” means the General Data Protection Regulation ((EU) 2016/679) and the UK GDPR at such time it comes into force.

“DPA” means Data Protection Act 2018.

“Data Protection Legislation” means: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the UK GDPR when it enters into force; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

“Personal Data” means the personal data as defined by the Data Protection Legislation and as provided by or on behalf of the Authority.

“Personal Data Breach” a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data.

- 22.2 With respect to the parties’ obligations under this Contract, the parties agree that the Authority is the data controller, and that the Supplier is the data processor for the purposes of the Data Protection Legislation
- 22.3 The following categories of Personal Data will be collected processed and used by the Supplier under this Agreement
- i) Personal Data
 - ii) categories of data subjects

The following data subject categories may be collected processed and used by the Supplier under this Agreement:

- i. complaints, enquirers or their representatives
- ii. customers
- iii. members of the public
- iv. persons contracted to provide a service (suppliers)
- v. professional advisers and consultants
- vi. service users and their representatives
- vii. staff, persons contracted to provide a service
- viii. traders and others subject to inspection
- ix. representatives of other organisations

22.4 The Supplier shall:

- a) comply at all times with provisions equivalent to the Data Protection Legislation and shall not perform its obligation under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation;

- b) maintain up to date records of processing activities under its responsibility and make those records available to the Authority for inspection on request;
- c) process Personal Data only in accordance with the documented instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Authority to the Supplier) and for no other purpose;
- d) process Personal Data only to the extent, and in such a manner, as is necessary for the provision of the Contract's obligations, or as is required by law or any regulatory body;
- e) implement appropriate technical and organisational measures to protect Personal Data against a Personal Data Breach. These measures shall be appropriate to the risk of harm which might result from any such breach of security having regard to the nature of Personal Data which is to be protected as shall be required by Article 32-36 GDPR;
- f) take reasonable steps to ensure the reliability of any personnel who have access to Personal Data;
- g) ensure that personnel without appropriate authority do not have access to Personal Data;
- h) obtain prior written consent from the Authority in order to transfer Personal Data to any subcontractors or affiliates for the provision of the Contract and oblige by way of contract or other legal authority any subcontractors or affiliates to comply with the same data protection obligations as those set out in these clauses;
- i) ensure that all personnel required to access Personal Data are informed of the confidential nature of Personal Data and comply with the obligations as set out in these clauses;
- j) ensure that all personnel receive an adequate level of training in data protection;
- k) notify the Authority within twenty four hours if it becomes aware of a breach or alleged breach of the Data Protection Legislation and;
- l) provide the Authority with full co-operation and assistance in relation to investigating breaches to include inspection of premises and security arrangements if requested.
- m) notify the Authority within five Working Days if it receives a request under Chapter 3 GDPR as applicable or a complaint relating to the Authority's obligations under the Data Protection Legislation either to the Information Commission Officer or otherwise.
- n) provide the Authority with full co-operation and assistance in relation to any complaint or request made under, Chapter 3 GDPR including by:

- i) providing the Authority with full details of the complaint or request or;
 - ii) providing the Authority with any information requested by the Authority within the timescales required by the Authority;

 - o) the Supplier shall, upon reasonable notice, allow officers of the Authority to have reasonable rights of access at all times to the Supplier's premises, staff and records for the purposes of monitoring the Supplier's compliance with the Data Protection Legislation including its security requirements.
- 22.5 No Personal Data supplied to the Supplier shall be transferred or processed outside the UK or the European Economic Area.
- 22.6 On termination of this Contract the Supplier shall return all Personal Data or destroy or dispose of it in a secure manner and in accordance with any specific instructions issued by the Authority in writing.
- 22.7 The Supplier agrees to indemnify the Authority against all losses claims damages liabilities costs and expenses (including reasonable legal costs) that the Authority may incur as a result of the Supplier's failure to comply with the Data Protection Legislation as required by these clauses.

23 MODERN SLAVERY

In performing its obligations under the agreement, the Supplier shall:

- a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations [and codes] from time to time in force [including [but not limited to] the Modern Slavery Act 2015]; [and]
- b) comply with the Anti-slavery Policy **OR** have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance; [and]
- c) 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; [and]
- d) include in its contracts with its [direct] subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 23 **OR** ensure that each of its [direct] subcontractors and suppliers shall comply with the Anti- slavery policy and with all applicable anti-slavery and human trafficking laws, statutes, regulations [and codes] from time to time in force [including [but not limited to] the Modern Slavery Act 2015].

24 FREEDOM OF INFORMATION

Definitions

Commercially Sensitive Information: the information listed in schedule [] comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.

Confidential Information: means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:

- a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- b) any information developed by the parties in the course of carrying out this agreement;
- c) Personal Data;
- d) any Commercially Sensitive Information.

Environmental Information Regulations: the Environmental Information Regulations 2004 (*SI 2004/3391*) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Information: has the meaning given under section 84 of FOIA.

Representatives: means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisors.

Request for Information: a request for information or an apparent request under the FOIA or the Environmental Information Regulations.



Signed for and on behalf of Eastleigh Borough Council:

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Authorised Signatory

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Authorised Signatory

Signed for and on behalf of the Supplier:

.....
Director

.....
Director

SCHEDULE X

SCHEDULE X