

CONDITIONS OF CONTRACT

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1. **Definitions**

1.1 In these conditions of Contract the following definitions shall apply:-

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| <i>Contract Manager</i> | The nominated employee of the Supplier who will be the main point of contact for the Council for all purposes connected with the Contract |
| <i>Commencement Date</i> | [To be agreed] |
| <i>Conditions</i> | these Conditions of Contract and any modification of them made in accordance with the Contract |
| <i>Confidential Information</i> | Any information that is clearly identified as confidential at the time of disclosure or is by its nature confidential and or is governed by the Data Protection Act 1998 |
| <i>The Contract</i> | The agreement for provision of the Service between the Council and the Supplier incorporating the Contract Documents |
| <i>The Contract Documents</i> | The agreement concluded between the Council and the Supplier, including all specifications, Invitation to Tender Documents and Tender responses, plans and other documents incorporated or referred to therein In the absence of any Contract Documents falling within the above description then a Purchase Order as raised by the Council shall be considered to be a Contract Document subject to these terms and conditions |
| <i>Contract Period</i> | [as agreed by the parties and subject to clause 5] |
| <i>Contract Price</i> | The monetary consideration to be paid by the Council to the Supplier for the provision of supplying the Service. The price quoted excludes VAT unless stated to the contrary |
| <i>The Council</i> | Reigate and Banstead Borough Council |
| <i>Material</i> | Means software, manuals, information, data, drawings and other documents or materials - " |
| <i>HMG Personnel Security Standard</i> | A good practice guide to the pre-employment screening of Government staff and contractors |

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| <i>Personal Data</i> | Has the same meaning as in section 1(3) of the Data Protection Act 1998 or any amendment, re-enactment or replacement thereof |
| <i>Service</i> | all supplies goods material and/or services that the Supplier is required to supply under the Contract |
| <i>The Specification</i> | The Council's detailed requirements for the provision of services |
| <i>Supervising Officer</i> | the person appointed by the Council and notified in writing to the Supplier to act as the representative of the Council for all purposes connected with the Contract, or the authorised representative of such a person and Supervising Officers shall be defined accordingly |
| <i>Supplier</i> | the legal person to whom this Contract is awarded and who undertakes to supply services to the Council as provided for in the Contract |

2. **Headings**

2.1 The headings in the Contract are for ease of reference only and shall not affect its construction or interpretation.

3. **Supervising Officer**

3.1 Any decision, act or thing that the Council is required or authorised to take or do under the Contract may be taken or done by any person authorised to act as Supervising Officer, either generally or specifically, by the Council to take or do that decision, act or thing.

4. **Variations**

4.1 The Council at its discretion but at all times acting reasonably is entitled to vary or omit any part of the Service during the Contract Period.

4.2 All variations and or any changes to the Contract shall be mutually agreed in writing and signed by the parties prior to implementation, such agreement not to be unreasonably withheld or delayed.

5. **Contract Period**

5.1 The Supplier is required to provide the Service within the deadlines required by the Council and as tendered or quoted for by the Supplier. The Contract shall remain in force unless terminated in accordance with the provisions of the Contract for the period agreed commencing on the Commencement Date with an option to extend

the Contract by mutual agreement of the parties exercisable prior to expiry of the initial Contract Period.

6. **Form of Contract**

6.1 Sufficiency of Information

The Supplier shall be deemed to have satisfied itself before submitting its proposal that it has all information required in order to make its proposal and to have obtained for itself all necessary information as to risks contingencies and any other circumstances that might reasonably influence or affect the Supplier's tender submission.

6.2 Ambiguities

Except as otherwise expressly provided the Contract Documents are to be taken as mutually explanatory of one another and any ambiguities or discrepancies shall be resolved by the Council who shall issue the Supplier with appropriate instructions. Any adjustment to the Service arising from such instructions shall be subject to Condition 4.

6.3 Inconsistency

Where there is any inconsistency between these Conditions and any provision in any of the other Contract Documents these Conditions shall prevail.

7. **Delivery and Performance of Service**

7.1 The Supplier shall ensure any products are of satisfactory quality and fit for purpose and are delivered within agreed timescales. The Supplier shall perform the Service from the Commencement Date and at all times during the Contract Period :-

- (a) with proper skill and care
- (b) safely without risk to health
- (c) in accordance with the Contract
- (d) lawfully

and to the satisfaction of the Supervising Officer.

7.2 The Supplier shall ensure that data provided to the Council complies with the Specification and any Council protocols on data quality. Such data must be complete, accountable, valid, reliable, timely and relevant.

7.3 The Supplier shall ensure that the Contract Manager or a competent deputy authorised by the Supplier to act on its behalf is available to the Council at all reasonable times during which the Service is provided.

7.4 The Contract Manager shall inform the Supervising Officer promptly of and confirm in writing any instances of activity or omission on the part of the Council that prevent or hinder the Supplier from complying with the Contract.

7.5 The Supplier shall provide and shall ensure that its employees wear at all times when engaged on provision of the Service such identification (including photographic identification) as may be specified by the Council.

8. **Confidentiality, Data Protection and Freedom of Information**

8.1 The Supplier shall not without the written consent of the Council during the Contract Period or at any other time make use for its own purposes or disclose to any person (except as may be required by law) the Contract Documents or any information contained in them or in any material provided by the Council pursuant to the Contract or prepared by the Supplier exclusively for the Contract or collected by Supplier pursuant to the Contract which information shall be deemed to be confidential.

8.2 The Supplier shall not dispose nor part with possession of any confidential material provided to the Supplier by the Council pursuant to the Contract or prepared by the Supplier pursuant to the Contract other than in accordance with the express written instructions of the Council. For the avoidance of doubt this Clause applies to any data compiled as part of the Service.

8.3 The Supplier shall not disclose to any third party any Personal Data held by the Council or any confidential information that comes into its possession in the course of providing the Service under the Data Protection Act 1998 or otherwise.

8.4 The Council shall keep in confidence all Confidential Information of the Supplier obtained under this Contract and shall not divulge the same to any person (other than their own or their employees and professional advisors who need to know the information) without the consent of the Supplier.

8.5 This Condition 8 shall not apply to information which is:-

- (a) in the public domain other than in breach of this Contract;
- (b) in the possession of the receiving party before such divulgence has taken place;
- (c) obtained from a third party who is free to divulge the same; or
- (d) legally required to be disclosed.

8.6 The Supplier shall procure the compliance of its employees with the provisions of this Condition.

8.7 Where the Council is required to access data or information via the Government Gateway, the Supplier shall ensure that all personnel handling or having access to personal data comply with the practices set out in HMG Baseline Personnel Security Standard. The Supplier shall ensure that this standard is complied with for all and

any staff (permanent or temporary) that have access to the data or information and shall indemnify the Council for any failures in that regard.

- 8.8 The Supplier acknowledges that the Freedom of Information Act 2000 applies to the Contract and will assist the Council at no cost in complying with any requests or disclosure of information in accordance with the legislation and any Codes of Practice relating thereto. The Council shall be entitled to release the Contract or any part thereof and/or any documents or other information relating to the formation of the Contract under the Freedom of Information Act 2000.

9. **Observance of Statutory Requirements**

- 9.1 The Supplier shall comply with all statutory and other provisions required of it to be observed and performed in connection with the Service and hereby indemnifies the Council against all actions, claims, demands, proceedings, costs, charges and expenses whatsoever in respect of any breach by the Supplier of the Conditions.

10. **Gratuities**

- 10.1 The Supplier shall not whether by itself or by any person employed by the Supplier solicit or accept any gratuity tip or any other form of money taking or reward collection or charge for any part of the Service other than charges properly approved by the Council in accordance with the provisions of the Contract.

11. **Indemnity and Insurance**

- 11.1 Neither the Council nor the Supplier excludes or restricts in any way its liability for death or personal injury resulting from its own negligence or the negligence of its employees or agents acting in the course of their employment or agency or for fraudulent misrepresentation.
- 11.2 Neither the Supplier nor the Council shall be liable to each other in contract, tort (including negligence) or otherwise for any indirect, special or consequential loss.
- 11.3 The Supplier's liability to the Council in contract, tort (including negligence) or otherwise in relation to this Contract is limited to £500,000.00 for any one event or series of related events and to £1,000,000.00 for all events (connected or unconnected) in any period of twelve (12) consecutive calendar months.
- 11.4 The Council's liability to the Supplier in contract, tort (including negligence) or otherwise in relation to this Contract is limited to £500,000.00 for any one event or series of related events and to £1,000,000.00 for all events (connected or unconnected) in any period of twelve (12) consecutive calendar months.
- 11.5 The Supplier shall insure with an insurance company approved by the Council against the risks identified in Condition 11.1 above by way of minimum levels of insurance cover as follows:-

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| (a) | Employers Liability | £10 million |
| (b) | Public Liability | £ 5 million |
| (c) | Professional Indemnity | £ 1 million |

The Supplier shall supply to the Council before the Commencement Date and upon each renewal date of any relevant policy and at any other time at the request of the Council a certificate from its insurers or brokers confirming that the Supplier's insurance policies comply with this Condition.

- 11.6 If the Supplier shall fail upon request to produce to the Council satisfactory evidence of insurances required by this Condition, the Council may without prejudice to any other remedy effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose may deduct the amount so paid by the Council from any monies due or which may become due to the Supplier or recover the same as a debt due from the Supplier.

12. **Premises**

- 12.1 The Supplier shall at all times during the Contract Period provide and maintain such premises (where relevant) as are necessary for the proper performance of the Service.

13. **Certification and Payments**

- 13.1 Payments in respect of the Service shall be made by the Council in pounds sterling (GBP) within 30 days of the date of a correct invoice submitted in accordance with the terms of this Contract. Any disputed invoice will be notified to the Supplier by the Council as soon as reasonably practicable.

14. **Value Added Tax**

- 14.1 In addition to the payments specified in Condition 13 the Council shall pay to the Supplier such Value Added Tax as may be properly chargeable by the Supplier in connection with the provision of the Service. The Supplier shall issue a valid Value Added Tax invoice to the Council in respect of it.

15. **Termination and Default**

- 15.1 The Council shall be entitled to cancel the Contract to recover from the Supplier the amount of any loss resulting from such cancellation if:-

- (a) the Supplier or any employee of 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 not doing any act in relation to the obtaining or performance of the contract or for showing or not showing favour or disfavour to any person in relation to the Contract or the Supplier or any person employed by the Supplier has committed any offence under the Prevention of Corruption Act 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) of the Local Government Act 1972.

15.2 If the Supplier:-

- (a) commits a material breach of the Supplier's obligations under the Contract, which is capable of remedy, but the Supplier fails to remedy the breach written a reasonable time of a written notice to do so.
- (b) becomes bankrupt or makes a composition or arrangement with its creditors or has a proposal in respect of its company for voluntary arrangement for a composition of debts or scheme or arrangement approved in accordance with the Insolvency Act 1986;
- (c) has an application made under the Insolvency Act 1986 to the court for the appointment of an administrative receiver;
- (d) has a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed;
- (e) has provisional liquidator receiver or manager of its business or undertaking duly appointed;
- (f) has an administrative receiver as defined in the Insolvency Act 1986 appointed;
- (g) has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge;
- (h) is in circumstances which entitle the court or a creditor to appoint or have appointed a receiver a manager or administrative receiver or which entitle the court to make a winding-up order;
- (i) the control of the Supplier changes without the approval of the Council, where such change in control has a material effect on the delivery of the Services.

then in any such circumstances the Council may without prejudice to any accrued rights or remedies under the Contract terminate the Contract by notice in writing having immediate effect.

15.3 If the Contract is terminated as provided in Condition 15.1 or 15.2 and is not reinstated the Council shall:-

- (a) cease to be under any obligation to make further payment until the costs loss and/or damage resulting from or arising out of the cessation of the Contract shall have been calculated and provided such calculation shows a sum or sums due to the Supplier;
- (b) be entitled to employ and pay other persons to provide and complete the provision of the Service or any part of it;

- (c) be entitled to deduct from any sum or sums which would have been due from the Council to the Supplier under the Contract or be entitled to recover the same from the Supplier as a debt any loss or damage to the Council resulting from or arising out of the termination of the Contract. Such loss or damage shall include the reasonable direct cost to the Council of the time spent by its officers in terminating the Contract and making alternative arrangements for the provision of the Service or any part of it;
- (d) when the total costs loss and/or damage resulting from or arising directly out of the termination of the Contract has been calculated and deducted so far as practicable from any sum or sums which would but for Condition 15.3(a) have been due to the Supplier any balance shown as due to the Council shall be recoverable as a debt or alternatively the Council shall pay any balance shown as due to the Supplier.

15.4 The rights of the Council under this Condition are in addition to and without prejudice to any other rights the Council may have.

15.5 If the Council shall omit or require the Supplier to cease to provide a substantial part of the Service, the Council may at its sole discretion terminate the Supplier's Contract by thirty (30) days notice in writing. If the Contract is terminated under this Condition neither the Council nor the Supplier shall have claims against the other in respect of any loss or damage resulting from or arising out of the termination of the Contract. The Supplier shall be entitled to receive from the Council any sum or sums due in respect of work performed up to the time of termination of the Contract and any reasonable proportion of committed future costs the Supplier is unable to recover. The Supplier shall use its reasonable endeavours to mitigate such costs.

15.6 If the Council commits a material breach of the Council's obligations under the Contract, that is capable of remedy, but the Council fails to remedy the breach within a reasonable time of a written notice to do so then the Supplier may without prejudice to any accrued rights or remedies under the Contract terminate the Contract by notice in writing having immediate effect.

15.7 If the Contract is terminated as provided for in Condition 15.6 the Supplier shall:-

- (a) cease to be under any obligation to provide the Service; and
- (b) be entitled to recover any sum or sums which would have been due from the Council to the Supplier under the Contract or be entitled to recover the same from the Council as a debt any loss or damage to the Supplier resulting from or arising directly out of the termination of the Contract.

16. **Recovery of Sums Due to the Council**

16.1 Whenever under the Contract any sum or money shall be recoverable from or payable by the Supplier to the Council it may be deducted from any sum then due or which at any time may become due to the Supplier under the Contract.

17. **Notices**

17.1 Any written notice required to be given to the Council under the Contract may be served:-

- (a) by delivering the notice by hand to the Council's Contract Officer, Finance & Procurement, Town Hall, Castlefield Road, Reigate, Surrey RH2 0SH, in which case the notice shall be deemed to have been served at the time of delivery provided that a receipt is obtained; or
- (b) by posting the notice in a pre-paid envelope sent first class recorded delivery addressed to the Council's Contract's Officer , Finance and Procurement, Town Hall, Castlefield Road, Reigate, Surrey RH2 0SH, in which case the notice shall subject to proof to the contrary be deemed to have been served on the second working day after the date of posting.

17.2 Any written notice required to be given to the Supplier under the contract may be served:-

- (a) by posting the notice in a pre-paid envelope sent first class recorded delivery addressed to the Contract Manager at the Supplier's last known place of business or if the Supplier is a company at its registered office in which case the notice shall subject to proof to the contrary be deemed to have been served on the second working day after the date of posting.

18. **Waiver**

18.1 Failure by the Council or the Supplier at any time to enforce the provisions of the Contract or to require performance of any of the provisions of the Contract shall not be construed as a waiver of any such provision and shall not affect the validity of the Contract or any part of it or the right of the Council or the Supplier to enforce any provision in accordance with its terms.

19. **Severance**

19.1 If any provision of the contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

20. **Legal Fees**

20.1 The parties shall bear their own legal and other fees in relation to the Contract.

21. **Complaints**

21.1 Any complaints received by the Supplier or Contract Manager from any member of the public about the provision of the Service shall immediately be referred to the Supervising Officer.

22. **Dispute Resolution**

22.1 If any dispute or difference shall arise between the Council and the Supplier arising out of or in connection with the Contract, the parties agree to use their best efforts to resolve the dispute by further escalation between their organisations as necessary. If the parties fail to reach agreement such dispute or difference may be referred to mediation to be agreed between the parties or failing agreement within 14 days after either party has given to the other a request to concur in the appointment of a mediator, a person to be appointed on the request of either party by the President or Vice-President for the time being of the Centre for Dispute Resolution (CEDR).

22.2 The costs of the mediation shall be shared equally by the parties.

23. **Publicity**

23.1 The Supplier shall not advertise or publicly announce that it is supplying goods or undertaking work for the Council without the prior written consent of the Council who retains the right to approve the content and/or wording of such publicity.

23.2 Notwithstanding Condition 23.1 above, the Council or other participating local authorities or bodies shall be entitled to publish details of the contract award in their own Contract Registers (and websites) including the register hosted by Improvement and Efficiency South East website and business portal (IESE.gov.uk) or such other similar public information source. The information published shall include the contractor's name, the relevant contacts at the contractor organisation, the name of the local authority, the subject matter, duration and overall value of the contract.

24. **Law**

24.1 The parties shall accept the exclusive jurisdiction of the English Courts and agree that the Contract is to be governed and construed according to English Law.

25. **Force Majeure**

25.1 Neither party shall be liable to the other for any failure to perform its obligations under the Contract where such performance is rendered impossible by circumstances beyond its reasonable control, but nothing in this Condition shall limit the obligations of the Supplier to use its reasonable endeavours to fulfil its obligations under the Contract.

26. **Assignment and Sub-Contracting**

26.1 Neither party shall assign, transfer, sub-contract or sub-let the whole or any part of the Contract without the prior written consent of the other party

26.2 In the event of assignment or sub-contracting of all or part of the Contract, the Supplier shall retain liability under the Contract and is required to enter into an agreement with its sub-contractor on substantially similar terms to this Contract.

27. **Third Party Rights**

27.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to any of the provisions of the Contract.

28. **Suppliers Staff at Council Premises**

28.1 The Council may refuse admission to Council owned, occupied or managed premises to any the Supplier's staff, or require any such staff to leave the premises, at any time and for any reason. If the Council requires any staff of the Supplier to leave the premises, the Supplier shall ensure that he or she promptly does so.

28.2 While the Supplier's staff attends the premises, the Supplier shall ensure that they conform to the Council's codes and regulations, adopt proper standards of behaviour, and co-operate with the Council's employees or agents with designate security responsibilities.

28.3 The Supplier shall notify the Council immediately of any damage, loss or injury to property or persons occurring at the premises of which the Supplier and/or its staff are or ought reasonably to be aware.

28.4 The Supplier shall ensure that it and its staff take all due precautions to protect the health and safety of all persons who may be involved in or affected by the carrying out of the Contract.

29. **Equal Opportunities**

29.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment. The Contractor is also obliged to assist the Council to promote equality of opportunity in accordance with its statutory duties and any Council policies or codes in place.

29.2 The Contractor shall take all reasonable steps to secure the observance of Condition 29.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in execution of the Contract.

30. **Intellectual Property Rights**

30.1 All intellectual property in any original Material, which is produced by the Supplier exclusively for the Council under this Contract, will belong to the Council. However, where such Material is an adaptation of, or derived from existing Material, unless the existing Material is wholly owned by the Council, the ownership of the intellectual property will not pass to the Council. Where ownership of the intellectual property in any Material does not pass to the Council, the Supplier grants the Council a non-exclusive non-transferable, perpetual and world-wide, licence to use the Material produced or supplied by the Supplier under this Contract for the Council's own internal purposes.

- 30.2 Other than as stated in paragraph 30.1 nothing in this Contract will require the Supplier to transfer, assign or licence any intellectual property or grant any intellectual property rights to the Council.
- 30.3 Either party may use any know-how acquired, principles learned or developed, or experience gained, during the performance of this Contract to perform work for other customers.
- 30.4 This Condition 30 will survive termination of the Contract.

31. **Intellectual Property Indemnities**

- 31.1. The Supplier will defend, indemnify and hold the Council harmless against all claims and proceedings arising from alleged infringement of any third party's intellectual property rights by reason of the Supplier's provision of the Service. As a condition of this indemnity the Council must:-
- (a) notify the Supplier promptly in writing of any allegation of infringement;
 - (b) make no admission relating to the infringement;
 - (c) allow the Supplier to conduct all negotiations and proceedings and give the Supplier all reasonable assistance in doing so (the Supplier will pay the Council's reasonable expenses for such assistance); and
 - (d) allow the Supplier to modify or replace the Service, or any item provided as part of the Service, so as to avoid the infringement, provided that the modification or replacement does not materially adversely affect the performance of the Service.
- 31.2. If the Service becomes, or the Supplier believes it is likely to become, the subject of an allegation or claim for infringement of any intellectual property rights as referred to in Condition 31.1, the Supplier, at its option and expense, may secure for the Council a right of continued use or modify or replace the Service, as set forth in Condition 31.1(d), so that it is no longer infringing. If neither of those remedies is available to the Supplier on reasonable terms, the Supplier may so notify the Council and terminate such infringing Service without penalty to either party.
- 31.3. Without prejudice to the provisions of the applicable law, the indemnity and remedies in Conditions 31.1 and 31.2 are the exclusive remedies for claims of infringement and do not apply to claims for infringements related to the use of the Service in conjunction with other equipment, software or services not supplied by the Supplier or to infringements occasioned by work done by the Supplier in accordance with directions or specifications given by the Council or designs made by, or on behalf of, the Council, including any part of the Service designed to the Council's specifications. The Council will indemnify and hold the Supplier harmless against all claims, proceedings and expenses arising from such infringements and will immediately cease any activity which gives rise to the alleged infringement.
- 31.4. The limitations and exclusions of liability contained in Condition 11, do not apply to this Condition 31.

32. **Entire Agreement**

- 32.1 This Contract supersedes all prior oral or written understandings and/or representations between the Council and the Supplier (unless specifically incorporated into the Contract), constitutes the entire agreement with respect to its subject matter and shall not be modified or amended except in writing and signed by authorised representatives of both the Council and the Supplier.