



Sussex Housing & Care

Volume A

IT/Network Support

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These Conditions may only be varied with the written agreement of the Purchaser. No terms or conditions put forward at any time by the Supplier shall form any part of the Contract unless specifically agreed in writing by the Purchaser.

1. DEFINITIONS

In these Conditions:

'Purchaser' means on behalf of SHC; *'Supplier'* means the person, firm or company to whom the Contract is issued; *'Services'* means the services to be provided as specified in the Contract and shall, where the context so admits, include any materials, articles and goods to be supplied there under; *'Contract'* means the contract between the Purchaser and the Supplier consisting of these Conditions and other documents (or parts thereof) specified in the Purchase Order;

2. CHANGE TO CONTRACT REQUIREMENTS

- 2.1 The Purchaser may order any variation to any part of the Services that for any other reason shall in the Purchaser's opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Services and changes in quality, form, character, kind, timing, method or sequence of the Services.
- 2.2 Save as otherwise provided herein, no variation of the Services as provided for in Condition 2.1 hereof shall be valid unless given or confirmed in the form of an order given by the Purchaser. All such orders shall be given in writing provided that if for any reason the Purchaser shall find it necessary to give any such order orally in the first instance the Supplier shall comply with such oral order which must be confirmed in writing by the Purchaser within 2 working days of the giving of such oral order by the Purchaser, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.
- 2.3 Where any such variation of the Services made in accordance with Condition 2.1 and 2.2 has affected or may affect the costs incurred by the Supplier in providing the Services, the Supplier will notify the Purchaser in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Purchaser, who shall take all of the facts into account (including such information as may be provided by the Supplier in respect of the effect which such variation has had or may have on the costs incurred by the Supplier in providing the service) and may authorise such alteration to the sums to be paid to the Supplier in accordance with the provisions of the Contract as are, in the Purchaser's opinion, appropriate and reasonable in the circumstances.

3. SUPPLIER'S STATUS

In carrying out the Services the Supplier shall be acting as principal and not as the agent of the Purchaser. Accordingly:

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

4. SUPPLIER'S PERSONNEL

- 4.1 If and when instructed by the Purchaser, the Supplier shall give to the Purchaser a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Purchaser may reasonably require.
- 4.2 The decision of the Purchaser shall be final and conclusive as to whether any person is to be admitted to or is to be removed from the Contract or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Supplier has furnished the information or taken the steps required of the Supplier by this Condition.
- 4.3 The Supplier shall bear the cost of any notice, instruction or decision of the Purchaser under this Condition.

5. HEALTH AND SAFETY

The Supplier shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to the Purchaser, whether specifically or generally. The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition.

6. TIME OF PERFORMANCE

The Supplier shall begin performing the Services on the date stated in the Contract and shall complete the Services by the date stated in the Contract or continue to perform them for the period stated in the Contract (whichever is applicable). The Purchaser may by written notice require the Supplier to execute the Services in such order as the Purchaser may decide. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as the Purchaser may from time to time require.

7. PAYMENT

- 7.1 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Purchaser.
- 7.2 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

7.3 Notwithstanding Condition 19 of this Contract the Supplier may assign to another person (an "assignee") the right to receive payment of the Price or any part thereof due to the Supplier under this Contract subject to (i) deduction of sums in respect of which the Purchaser exercises the right of recovery under Condition 19 of this Contract and (ii) all the related rights of the Purchaser under this Contract in relation to the recovery of sums due but unpaid. The Supplier shall notify or procure that any assignee notifies the Purchaser of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Purchaser to redirect payments or invoices accordingly. In the absence of such notification the Purchaser shall be under no obligation to vary the arrangements for payment of the Price or for handling invoices.

8. AUDIT

- 8.1 The Supplier shall keep and maintain until 5 years after the Contract has been completed records to the satisfaction of the Purchaser of all expenditures which are reimbursable by the Purchaser and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Purchaser on a time charge basis. The Supplier shall on request afford the Purchaser or the Purchaser's representatives such access to those records as may be required by the Purchaser in connection with the Contract.
- 8.2 The provisions of this Condition 10 shall apply during the continuance of this Contract and after its termination howsoever arising.

9. CORRUPT GIFTS OR PAYMENTS

The Supplier shall not offer or give, or agree to give, to any employee or representative of the Purchaser 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 Purchaser or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract. The attention of the Supplier is drawn to the criminal offences created by the Bribery Act 2010.

10. PATENTS, INFORMATION AND COPYRIGHT

- 10.1 It shall be a condition of the Contract that, except to the extent that the Services incorporate designs furnished by the Purchaser, that nothing done by the Supplier in the performance of the Services shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Supplier shall indemnify the Purchaser and the Crown against all actions, claims, demands, costs and expenses which the Purchaser or the Crown may suffer or incur as a result of or in connection with any breach of this Condition.
- 10.2 All rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs whether in writing or on magnetic or other media:
- (a) furnished to or made available to the Supplier by the Purchaser shall remain the property of the Purchaser.
 - (b) prepared by or for the Supplier for use, or intended use, in relation to the performance of this Contract are hereby assigned to, and (without prejudice to Condition 16.2) the Supplier shall not and shall procure that the Supplier's employees and agents shall not (except to the extent necessary for the implementation of this Contract) without the prior written consent of the Purchaser use or disclose any such reports, documents, specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to this Contract) which the Supplier may obtain pursuant to or by reason of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Supplier shall not refer to the Purchaser or the contract in any advertisement without the Purchaser's prior written consent.
- 10.3 The provisions of this Condition 12 shall apply during the continuance of this Contract and after its termination howsoever arising.

11. INDEMNITY AND INSURANCE

- 11.1 Without prejudice to any rights or remedies of the Purchaser the Supplier shall indemnify the Purchaser against all actions, suits, claims, demands,

losses, charges, costs and expenses which the purchaser may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the Supplier.

11.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Supplier (in respect of which the indemnity in Condition 11.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or willful act or omission of the Purchaser, the indemnity contained in Condition 11.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or willful act or omission of the Purchaser.

11.3 The Supplier shall have in force and shall require any sub-Contractor to have in force:

- a) employer's liability insurance in accordance with any legal requirements for the time being in force, and
- b) public liability insurance for such sum and range of cover as the Supplier deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £1 million for any one incident and unlimited in total, unless otherwise agreed by the Purchaser in writing.

11.4 The policy or policies of insurance referred to in Condition 11.3 shall be shown to the Purchaser whenever the Purchaser requests, together with satisfactory evidence of payment of premiums, including the latest premium due there under.

12. DISCRIMINATION

The Supplier must not unlawfully discriminate against any person within the meaning of the Equality Act 2010 in its activities relating to the Contract or any other contract with the Purchaser.

13. BLACKLISTING

The Supplier must not commit any breach of the Employment Relations 1999 Act

(Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Purchaser to terminate the Contract.

14. CONFIDENTIALITY, AND ACCESS TO INFORMATION

14.1 The Supplier shall keep secret and not disclose and shall procure that the Supplier's employees keep secret and do not disclose any information of a confidential nature obtained by the Supplier by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.

14.2 All information related to the Contract will be treated as commercial in confidence by the parties except that:

- a) The Supplier may disclose any information as required by law or judicial order to be disclosed.
- b) The Purchaser may disclose any information as required by law or judicial order to be disclosed, further the Purchaser may disclose all information obtained by the Purchaser by virtue of the Contract.

14.3 The provisions of this Condition 16 shall apply during the continuance of this Contract and after its termination howsoever arising.

15. TERMINATION

15.1 The Supplier shall notify the Purchaser in writing immediately upon the occurrence of any of the following events:

- (a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of the Supplier's estate or a criminal bankruptcy order is made against the Supplier, or the Supplier is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage the Supplier's affairs; or

- (b) where the Supplier is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of the firm or 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 dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) 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 administrator, 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.

15.2 On the occurrence of any of the events described in Condition 15.1 or, if the Supplier shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the Purchaser in writing to do so or, where the Supplier is an individual if the Supplier shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Purchaser shall be entitled to terminate this Contract by notice to the Supplier with immediate effect. Thereupon, without prejudice to any other of the Purchaser's rights, the Purchaser may complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefore in any payment subsequently made to the Supplier) all materials, plant and equipment on the Premises belonging to the Supplier, and the Purchaser 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 thereof incurred by the Purchaser (including the Purchaser's own costs). If the total cost to the Purchaser exceeds the amount (if any) due to the Supplier, the difference shall be recoverable by the Purchaser from the Supplier.

15.3 In addition to the Purchaser's rights of termination under Condition 15.2, Either party may immediately terminate the contract upon written notice to the other in the event of:

- (a) Any material breach of the contract by the other party, which is not remedied (if capable of remedy) within 30 days after notice is provided;
- (b) The other party becoming insolvent, entering into liquidation or suffering any similar action in consequence of debt; or ceases or threatens to cease to carry on business.

In the case of the contractor providing notice to SHC in order to end the contract, the supplier is required to provide all such assistance as may be necessary to ensure a seamless handover to a new supplier.

15.4 Termination under Condition 15.2 or 15.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Purchaser and shall not affect the continued operation of Conditions 10, 12, 16 and 24.

16. RECOVERY OF SUMS DUE

Wherever under this Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under this Contract or under any other agreement or contract with the Purchaser.

17. ASSIGNATION AND SUB-CONTRACTING

17.1 The Supplier shall not assign or sub-contract any portion of the Contract without the prior written consent of the Purchaser. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract or these Conditions.

17.2 Where the Purchaser has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to the Purchaser immediately it is issued.

17.3 Where the Supplier enters into a sub-contract must ensure that a provision is included which:

- a) requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Purchaser has made payment to the Supplier in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Supplier is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Supplier, payment must be made to the sub-contractor without deduction;
- b) notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Purchaser and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Purchaser; and
- c) in the same terms as that set out in this clause 17 (including for the avoidance of doubt this clause 17.3.c) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and sub-contractor as the case may be.

18. NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by e-mail, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefore, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

19. DISPUTE RESOLUTION

- 19.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.

19.2 Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination which cannot be resolved in good faith, shall be determined by the appointment of a single arbitrator to be agreed between the parties, and failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the English Arbitration Centre on the written application of either party. The seat of the arbitration shall be in England. The language used in the arbitral proceedings shall be English.

19.3 Any arbitration under 19.2 is subject to the Arbitration Act 1996.

20. HEADINGS

The headings to Conditions shall not affect their interpretation.

21. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with English law and the Supplier hereby irrevocably submits to the jurisdiction of the English courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Purchaser to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.