

TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES.

1. Definitions

"**Authority**" means Hereford and Worcester Fire and Rescue Authority, 2, Kings Court, Charles Hastings Way, Worcester. WR5 1 JR.

"**Contract**" means the agreement between the Authority and the Supplier consisting of these Terms and Conditions and related Purchase Order but excluding any terms and conditions of sale and/or supply of the Supplier

"**Contract Price**" means the price for the Goods and/or Services set out on the Purchase Order

"**Default**" means any breach of the obligations of the Supplier under the Contract

"**Goods**" means the goods, if any, to be supplied by the Supplier and identified in the Purchase Order

"**Purchase Order**" means the purchase order used by the Authority to place an order with Supplier for Goods and/or Services

"**Services**" means the services, if any, to be provided by the Supplier as identified in the Purchase Order

"**Supplier**" means the person, firm or company with whom the Authority enters into the Contract.

"**Tax**" means Value Added Tax, customs duties and any other taxes or duties.

2. Supply of Goods and/or Services. The Supplier shall provide the Goods and/or Services on the terms and conditions set out in the Contract. Subject to the Supplier fulfilling its obligations under the Contract the Authority shall pay the Supplier in accordance with the terms of the Contract.

3. Contracts for Goods

3.1 The Goods shall be to the reasonable satisfaction of the Authority, shall confirm to any particulars specified in the Purchase Order, shall be free from defects and be fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Supplier by the Authority.

3.2 The Goods shall be delivered to the location(s), and at the times and dates specified in the Purchase Order, and time of delivery shall be of the essence. If no times and dates are specified, the Goods shall be delivered promptly following the Supplier's receipt of the Purchase Order. Except where otherwise provided in the Purchase Order, delivery shall include the unloading, stacking or installation of the Goods by Supplier at such place as the Authority shall reasonably direct.

3.3 Property and risk in the Goods shall without prejudice to any other rights or remedies of the Authority pass to the Authority at the time of acceptance. The Goods shall be packed and marked in a proper manner and in accordance with the Authority's instructions and any statutory requirements and any requirements of carriers.

3.4 The Authority may by reasonable written notice to the Supplier reject any of the Goods which fail to meet the requirements specified herein, and shall be entitled (without prejudice to other rights and remedies) either to have the Goods repaired or replaced (at the option of the Authority) or to treat the Contract as discharged and seek damages from the Supplier. The issue by the Authority of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods.

4. Contracts for Services

4.1 Supplier shall provide the Services for the period specified in the Purchase Order in accordance with the Authority's requirements as set out in the Purchase Order. Timely provision of the Services shall be of the essence of the Contract, including in relation to commencing the provision of the Services.

4.2 Supplier shall perform the Services with all reasonable care, skill and diligence, and in accordance with good industry practice. Supplier warrants and represents that all persons engaged by Supplier for performance of the Services have the qualifications, skill and experience necessary for the proper performance of the Services.

4.3 If the Authority informs the Supplier that the Authority considers any part of the Services to be inadequate, without prejudice to Clause 4.5 below, the Supplier shall at its own expense re-schedule and perform the work correctly within such reasonable time as may be specified by the Authority.

4.4 Without prejudice to the Authority's other rights and remedies, the Supplier shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a direct consequence of the Supplier's delay in the performance of the Contract.

4.5 In the event that the Authority is of the opinion that there has been a Default by the Supplier in respect to the Services, then the Authority may, without prejudice to its other rights herein: (a) make

such deduction from the Contract Price as the Authority shall reasonably determine in respect of such of the Services as the Supplier shall have failed to provide; or (b) provide or procure the provision of part of the Services; or (c) terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself provide or procure a third party to provide such part of the Services; and/or (d) terminate, in accordance with Clause 18.

4.6 The Authority may charge to the Supplier any cost reasonably incurred by the Authority and any reasonable administration costs in respect of the provision of any part of the Services by the Authority or by a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services.

5. Contract Price

5.1 In consideration of the satisfactory performance of the Supplier's obligations under the Contract by the Supplier, the Authority shall pay the Contract Price.

5.2 The Authority shall pay the Supplier, in addition to the Contract Price, a sum equal to the Tax chargeable on the value of the Goods and/or Services provided in accordance with the Contract.

5.3 Payment of invoices accepted by the Authority will be made in cleared funds within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Authority.

5.4 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier, the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the Authority

6. Notices. Any notice which is to be given by either party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter), to the addresses/numbers set out on the Purchase Order, and such notice or communication shall be deemed to have been given 2 working days after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the other party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

7. The Contracts (Rights of Third Parties) Act 1999. No person who is not a party to the Contract shall have any right to enforce any term of the Contract, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both parties.

8. Information. The Supplier shall keep confidential all information belonging to or provided by the Authority in connection with this Contract and shall not further use or disclose it to any third party without the express consent of the Authority or except to the extent permitted by law

9. Security. The Supplier shall comply with all reasonable security requirements of the Authority while on the Authority's premises, and shall procure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements. The Authority shall provide the Supplier upon request copies of its written security procedures. The Authority reserves the right to refuse to admit to, or to withdraw permission to remain on, any of its premises, the Supplier or any sub-contractor, agent or servant of the Supplier.

10. Intellectual Property Rights

10.1 It shall be a condition of the Contract that the Goods and/or Services will not infringe any Intellectual Property Rights of any third party and the Supplier shall fully indemnify and keep indemnified the Authority against all actions, suits, claims, demands, losses, charges, costs and expenses which the Authority may suffer or incur as a result of or in connection with any breach of this Clause.

10.2 All Intellectual Property Rights in any specifications, instructions, plans, drawings, patents, patterns, models, designs or other material prepared by or for the Supplier for use, or intended use, in relation to the performance of the Contract shall belong to the Authority,

11. Assignment and Sub-Contracting. The Supplier shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior written consent of the Authority.

12. Waiver. The failure to insist upon strict performance of any provision of the Contract or to exercise any right or remedy shall not constitute a waiver of that right or remedy, no waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing, and a waiver of any right or remedy shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

13. Variation. The Contract shall not be varied or amended unless such variation or amendment is agreed in writing by the Authority and the Supplier.

14. Severability. If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the

provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

15. Remedies Cumulative. Except as otherwise expressly provided by the Contract, all remedies available to either party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

16. Indemnity

16.1 Neither party excludes or limits liability to the other party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

16.2 The Supplier shall indemnify and keep indemnified the Authority against injury (including death) to any persons or loss of or damage to any property which may arise out of the act default or negligence of the Supplier, any sub-contractor or their respective employees or agents, and against all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto arising from the provision of the Goods and/or Services

17. Termination on bankruptcy or insolvency. The Authority may terminate the Contract by notice in writing with immediate effect where:- a petition is presented for the Supplier's bankruptcy, or a bankruptcy order is made against the Supplier, or the Supplier makes any composition or arrangement with or for the benefit of creditors, or if the Supplier passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for an administration order in relation to it, or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or the Supplier is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

18. Termination on Default

The Authority may terminate the Contract, or terminate the provision of any part of the Contract by written notice to the Supplier with immediate effect if the Supplier commits a Default and if: (a) the Supplier has not remedied the Default within 30 days after issue of a written notice specifying the Default and requesting it to be remedied; or (b) the Default is not capable of remedy; or (c) the Default is a fundamental breach of the Contract.

19. Consequences of Termination. Where the Authority terminates all or part of the Contract under Clause 18, and makes other arrangements for the provision of Goods and/or Services, the Authority shall be entitled to recover from the Supplier the cost of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the contract period, and no further payments shall be payable by the Authority to the Supplier until the Authority has established the final cost of making those other arrangements.

20. Force Majeure. Neither party shall be liable to the other party for any delay in or failure to perform its obligations under the Contract (other than a payment of money) if such delay or failure results from an event beyond the reasonable control of such party.

21. Governing Law. This Contract shall be governed by and interpreted in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

22. Entire Agreement. The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause shall not exclude liability in respect of any fraudulent misrepresentation.

23. Freedom of Information Act. Should it be necessary, the contractor shall provide information for the purpose of the Authority's compliance with the Freedom of Information Act at no additional cost. The Authority, not the contractor shall decide which information is appropriate for release under the terms of the legislation.

ICT Services Agreement Security Provision – For agreements under which the Contractor has access to Authority data and/or Authority ICT infrastructure

24. Definitions

The 'Security Policy' means the Hereford and Worcester Fire and Rescue Security Policy which is available on the Service website on its procurement page.

25. 'Authority Data' is the data of Hereford and Worcester Fire and Rescue Authority.

26. Clause 1: Authority Data. The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

26.1 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.

26.2 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format specified.

26.3 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.

26.4 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back ups are stored off site in accordance with the Business Continuity and Disaster Recovery Plan. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than 2 monthly intervals.

26.5 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.

26.6 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data.

26.7 The Contractor shall do so as soon as practicable but not later than 4 weeks, and/or itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.

26.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

27. Clause 2: Protection of Personal Data. With respect to the parties' rights and obligations under this Agreement, the parties agree that the Authority is the Data Controller and that the Contractor is the Data Processor.

27.1 The Contractor shall process the Personal Data only in accordance with 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 Contractor during the Term).

27.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body.

27.3 Implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to Personal Data and having regard to the nature of the Personal Data which is to be protected.

27.4 Take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data

27.5 Obtain prior written consent from the Authority in order to transfer the Personal Data to any Subcontractors or Affiliates for the provision of the Services

27.6 Ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause

27.7 Ensure that one of Contractor Personnel does not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority

27.8 Notify the Authority (within [five] Working Days) if it receives a request from a Data Subject to have access to that person's Personal Data, or complaint or request relating to the Authority's obligations under the Data Protection Legislation.

27.9 Provide the Authority with full co-operation and assistance in relation to any complaint or request including by providing the Authority with full details of the complaint or request, complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instruction

27.10 Provide the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority) and provide the Authority with any information requested by the Authority

27.11 Permit the Authority or the Authority Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's data

27.12 Processing activities (and/or those of its agents, subsidiaries and Sub contractors) and comply

with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under this Agreement

27.13 Provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Authority), and not Process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred, and any reasonable instructions notified to it by the Authority.

27.14 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.

28. Clause 3: Freedom of Information. The Contractor acknowledges that the Authority is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.

28.1 The Contractor shall and shall procure that its Sub-contractors shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within [two] Working Days of receiving a Request for Information;

28.2 Provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within [five] Working Days (or such other period as the Authority may specify) of the Authority's request; and provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

28.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

28.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

28.5 The Contractor acknowledges that the Authority may, be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services, in certain circumstances without consulting the Contractor; or following consultation with the Contractor and having taken their views into account;

28.6 Provided always that the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

28.7 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

29. Clause 4: Confidentiality. Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Agreement, each party shall treat the other party's Confidential Information as confidential [and safeguard it accordingly]; and not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

29.1 Clause [4] shall not apply to the extent that such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause [reference] (Freedom of Information); such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information

owner; such information was obtained from a third party without obligation of confidentiality; such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or it is independently developed without access to the other party's Confidential Information.

29.2 The Contractor may only disclose the Authority's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.

29.3 The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Agreement.

29.4 [At the written request of the Authority, the Contractor shall procure that those members of the Contractor Personnel identified in the Authority's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.]

29.5 Nothing in this Agreement shall prevent the Authority from disclosing the Contractor's Confidential Information to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority; to any consultant, contractor or other person engaged by the Authority or any person conducting an Office of Government Commerce gateway review; for the purpose of the examination and certification of the Authority's accounts; or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

29.6 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause is made aware of the Authority's obligations of confidentiality.

29.7 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

30. Clause 5: Security Requirements. The Contractor shall comply, and shall procure the compliance of the Contractor Personnel, with the Security Policy and the Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.

30.1 The Authority shall notify the Contractor of any changes or proposed changes to the Security Policy.

30.2 If the Contractor believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a price change request. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the charges shall then be mutually agreed.

30.3 Until and/or unless a change to the charges is agreed by the Authority the Contractor shall continue to perform the Services in accordance with its existing obligations.

31. Malicious Software. The Contractor shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available [from an industry accepted anti-virus software vendor] to check for and delete Malicious Software from the ICT Environment.

31.1 Notwithstanding this, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

31.2 Any cost arising out of the actions of the parties taken in compliance with the provisions of clause shall be borne by the parties as follows by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Contractor); and by the Authority if the Malicious Software originates from the Authority Software or the Authority Data (whilst the Authority Data was under the control of the Authority).

32. Clause 6: Warranties. The Contractor warrants, represents and undertakes for the duration of the Term that all personnel used to provide the Services will be vetted in accordance with Good Industry Practice.

33. Suppliers and Contractors should be mindful of the Authority's 'Confidential Disclosure (Whistle Blowing)' procedure should they have any concerns about the way the FRA and in turn the Fire and Rescue Services, conducts its business. A copy of the procedure can be found on the Procurement page of the Service Website.

last reviewed ~ 6th Feb 2009