

Terms & Conditions for Chargeable Special Services

1. Definitions

"Applicant" means the person, firm or company with whom the Council enters into the Contract as detailed in the Special Service Form

"Charges" means the price for the Goods and/or Services as calculated with reference to the Council's official scale of special service charges and as set out in the Council's invoice(s)

"Contract" means the agreement between the Council and the Applicant consisting of these General Terms and Conditions the Special Service Form and any invoice(s)

"Contract Particulars" means (if applicable) the particulars of the Contract as set in the Special Service Form

"Council" means Warwickshire County Council of Shire Hall, Warwick CV34 4RL as Fire & Rescue Authority for Warwickshire

"Data Protection Legislation" means the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations, and secondary legislation (including the Data Protection Act 2018) and all applicable laws and regulations relating to processing of personal data and privacy

"Default" means any breach of the obligations of the Applicant under the Contract

"Goods" means the goods, if any, to be supplied by the Council in providing the Services

"Services" means the services to be provided by the Council as identified in the Contract Particulars

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

2. Supply of Goods and/or Services

2.1 The Council shall provide the Services and/or Goods on the terms and conditions set out in the Contract. The Applicant shall pay the Council in accordance with the terms of the Contract for the provision of the Services and/or Goods.

2.2 In providing the Services, the Council shall comply with and take into account all applicable laws, enactments, orders, regulations and other similar instruments, the requirements of any court with relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.

3. Not used

4. Contracts for Services

4.1 The Council shall provide the Services specified in the Special Service Form, in accordance with the Council's requirements and procedures.

4.2 In addition to the Charges, the Council may charge to the Applicant any costs reasonably incurred by the Council and any reasonable administration costs in respect of the provision of any part of the Services by the Council to the Applicant. Such costs may include but are not limited to the costs of repairing or replacing Council property damaged in providing the Services to the Applicant and the costs of any components or materials required for the repair servicing or recharging of appliances plant equipment or installations owned or operated by the Applicant.

4.3 Where the Services sought by the Applicant require the use of non-standard Council issue labour or materials in the provision of the Services, the Applicant will be responsible for the cost of providing any such non-standard Council issue labour or materials.

4.4 Where the Services sought by the Applicant require the supply of water from systems, reservoir or pools under the control of a Water Undertaking, Canal Authority or other third party, the Applicant must provide evidence of its permission to use that water supply as required. The Applicant will be responsible for the cost of any such water supply and the Council accepts no responsibility for the quality and/or safety of any water supplied by a third party.

4.5 The Applicant is responsible for his own transport to and from any Council Premises at which the Services may be provided. In special circumstances, transport of the Applicant by the Council may be considered by the Deputy County Fire

Officer and where authorised, such transport will be chargeable.

5. Charges

5.1 The Applicant shall pay the Charges in consideration of the Council's provision of the Services.

5.2 Where applicable, the Applicant shall pay the Council, in addition to the Charges, 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 issued by the Council will be made in cleared funds within 30 days of receipt.

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

6. Interest

Interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Contract at a rate per annum equivalent to 4% above the Bank of England base rate current on the date upon which such Charges first become overdue.

7. 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 Shire Hall, Warwick CV34 4RL in respect of notices to the Council and the Applicant's registered office in respect of notices to the Applicant (unless otherwise agreed in writing between the parties during the Contract), 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.

8. 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.

9. Information sharing and confidentiality

9.1 When required to do so by the Council, the Applicant shall assist the Council at no additional charge in meeting its obligations under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 or any statutory modification or re-enactment thereof of any related guidelines or codes of practice.

9.2 Both parties shall comply in all respects with the Data Protection Legislation as amended.

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

10. Security

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

11. Not used

12. Not used

13. 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.

14. Variation

The Contract shall not be varied or amended unless such variation or amendment is agreed in writing by the Council and the Applicant.

15. 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.

16. 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.

17. Indemnity and Insurance

17.1 Nothing in this Contract limits any liability which cannot legally be limited and 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.

17.2 The Applicant shall indemnify and keep indemnified the Council 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 Applicant, 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.

17.3 The Council's total liability to the Applicant shall not exceed ten times the value of the Charges. The Council's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

17.4 In no event shall either party be liable to the other for:

17.4.1 indirect or consequential loss or damage; and/or

17.4.2 loss of profits, business, revenue, goodwill or anticipated savings.

17.5 During the term of the Contract and for a period of years thereafter, the Council shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract.

17.6 The provisions of this clause 17 shall survive expiry or termination of this Contract however arising.

18. Termination on bankruptcy or insolvency

The Council may terminate the Contract by notice in writing with immediate effect where:- a petition is presented for the Applicant's bankruptcy, or a bankruptcy order is made against

the Applicant, or the Applicant makes any composition or arrangement with or for the benefit of creditors, or if the Applicant 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 Applicant 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.

19. Not used

20. Not used

21. 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. If such event of force majeure continues for a period of 90 days either party may terminate this Contract by notice in writing to the other party. The party suffering the event of force majeure shall take all reasonable steps to mitigate such delay or failure.

22. 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.

23. Entire Agreement

The Contract constitutes the entire agreement between the parties for the Goods and/or Services. 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.

24. Anti-bribery and Corruption

The Council may terminate the contract and recover from the Applicant the amount of any loss resulting from the termination if at any time it becomes known to the Council that the Applicant or any person employed by the Applicant or acting on his behalf whether with or without the knowledge of the Applicant has:

24.1 Offered, given or agreed to give any inducement or reward to any person or body in relation to the obtaining or execution of this Contract or any other contract with the Council;

24.2 Favoured or discriminated against any person in relation to this Contract or any other contract with the Council;

24.3 Committed an offence in relation to any contract with the Council under section 117(3) Local Government Act 1972 or the Bribery Act 2010.

25. Modern Slavery Act 2015

The Applicant shall comply with the Modern Slavery Act 2015.