

LONDON BOROUGH OF WALTHAM FOREST SUPPLIER AGREEMENT FOR THE PROVISION OF PERSONAL HOME SUPPORT VIA A DYNAMIC PURCHASING SYSTEM

PARTIES

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WALTHAM FOREST** of Town Hall, Forest Road, Walthamstow, London E17 4 JF (“the Council”);
and
- (2) **THE SUPPLIER** a company registered in England and Wales whose registered office is situate in England and Wales selected by the Council to supply Services following successful Accreditation and Enrolment on the Council’s DPS system (“the Supplier”).

BACKGROUND

(A) The Council placed a contract notice on 24 July 2015 (“the Contract Notice”) in the Official Journal of the European Union to establish a dynamic purchasing system (“DPS”) for the provision of personal home support services. The DPS shall admit suppliers to the relevant lots who successfully accredit and enrol to the DPS. The Services to be provided are social and other specific services within Schedule 3 of the Public Contracts Regulations 2015 (the PCR) for the purposes of Part 2 Chapter 3 Section 7 of the Regulations.

(B) In accordance with Regulation 34 of the PCR, the Council has used the restricted procedure to establish a DPS.

(C) The Council has contracted with a third party, Matrix SPS Limited (registered company number 07718565 – “Application Provider”) to provide a web-based software system namely SProc.Net, or such other technology as agreed between the Parties from time to time (the “Application”), to procure Services via the DPS as set out in the PCR, as amended from time to time, and for such Services to be transacted as further set out in this Supplier Agreement.

(D) The Council shall admit to the DPS each Supplier that satisfies the Selection Criteria and has submitted a request to participate in the DPS which complies with the Specification and any additional documents produced by the Council.

(E) The Supplier acknowledges and accepts that as part of the initial enrolment into the Council’s DPS through the Application, the Supplier shall be assessed by set Accreditation and Enrolment criteria. If successful and then entered into the Council’s DPS, the Supplier shall then need to compete in a further bidding exercise for each Requirement placed by the Council on the Application.

(F) On the basis of the Supplier’s successful Accreditation and Enrolment, the Council selected the Supplier to enter into the Supplier Agreement to provide Services to the Council on a call-off basis in accordance with this Supplier Agreement.

(G) For the avoidance of doubt, there will be no obligation for the Council to award any contracts under the Supplier Agreement during its Term.

IT IS AGREED as follows:-

1. GENERAL

1.1 Definitions

In this Supplier Agreement unless the context otherwise requires the following provisions shall have the meanings given to them below:

Accreditation and Enrolment: the evaluation of requests to participate received from suppliers and the admittance to the DPS of suppliers that fulfil the Council's Selection Criteria.

Application: the proprietary web-based software owned and operated by the Application Provider, currently called SProc.Net or such other technology as agreed between the Parties.

Application Provider: the owner and provider of the Application, who shall also act as the Council's payment agent.

Contract: the agreement in respect of the provision of the Services consisting of the following listed documents which shall be interpreted as a single contractual arrangement:-

- 1 The Supplier Agreement (and Supplier Agreement Terms and Conditions);
- 2 The Self-Billing Agreement;
- 3 The Service Agreement(s); and
- 4 The DPS Entry Guide.

Collectively called the "Contract Documents".

DPS Entry Guide: the entry guide issued by the Council detailing the operation of the DPS.

Dynamic Purchasing System or "DPS": the dynamic purchasing system operated via the Application, which applies the procurement methodology provided for by Regulation 34 PCR, as amended from time to time. For the avoidance of doubt, the Services to be provided under this Contract are classified as 'Social and Other Specific Services' under Part 2 Chapter 3 Section 7 of the PCR.

E-Auction: the electronic, reverse-auction operated within the Application for the purpose of awarding a Requirement.

Offer: the Supplier's tender for the desired Services in response to the Council's Requirement.

Open for Offers: the period during which time the Supplier can create and submit their Offer within the Application.

PCR: the Public Contract Regulations 2015, as amended from time to time.

Replacement Services: services that are identical or substantially similar to any of the Services to be provided the Supplier, which the Council receives in substitution by a Replacement Supplier who has already been admitted to the DPS, following the termination or expiry of a Service Agreement with the Supplier.

Replacement Supplier: a third party supplier of Replacement Services admitted to the DPS and appointed by the Council from time to time.

Requirement: a detailed specification and request for Services made by the Council via the Application.

Selection Criteria: the requisite criteria that a supplier must meet and maintain throughout the term of the DPS in order to successfully complete and maintain their Accreditation and Enrolment into the DPS.

Self-Bill Invoice: the invoice produced via the Application on the Supplier's behalf, through which the Application Provider shall process payment.

Self-Bill Agreement: the separate agreement between the Supplier and the Council, whereby the Supplier agrees to receive pre-populated Self-Bill Invoices generated through the Application for the billing of the appropriate price and payment.

Service Agreement: the Parties' acceptance of the Supplier's final Offer in response to the Council's corresponding Requirement incorporating the terms of this Supplier Agreement.

Service Receipt: the agreed record within the Application of the completed delivery of Services as quantified and agreed between the Parties.

Supplier Agreement: the terms and conditions set out in this document.

Supplier Agreement Terms and Conditions: the terms and conditions that govern the delivery of the Services by the Supplier

Working Day: a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

1.2 Except as provided in clause 1.1 all terms defined within this Supplier Agreement shall have the same meanings as the defined terms within the Service Agreement Terms and Conditions.

1.3 The following documents constitute the entire agreement between the Council and the Supplier for the performance of the Services, and shall be read and construed as part of the whole agreement relating to the Services ("Contract"):-

- (i) Any Service Agreement;
- (ii) The Supplier Agreement Terms and Conditions;
- (iii) The Supplier Agreement;
- (iv) The Self-Billing Agreement; and
- (v) The DPS Entry Guide.

1.4 The Supplier shall provide the Services in accordance with the provisions of the Contract and to the reasonable satisfaction of the Council for the duration of the Contract.

1.5 Electronic approval of the Supplier Agreement shall constitute the Supplier's acceptance of the Contract.

- 1.6 For the avoidance of doubt, where there is any conflict in the documents listed in clause 1.3 above, then the documents shall take precedence in the order as listed above.

2. TERM OF THE CONTRACT

- 2.1 The Supplier Agreement shall take effect on the date of electronic approval of the Supplier Agreement via SProc.Net and (unless otherwise terminated in accordance with the clause 10) shall terminate on 14 October 2019.

3. SCOPE OF SUPPLIER AGREEMENT

- 3.1 This Supplier Agreement governs the relationship between the Council and the Supplier in respect of the provision of Services by the Supplier to the Council when procured and/or transacted through the DPS. The Supplier must agree to the terms of the Supplier Agreement prior to acceptance into the DPS. For the avoidance of doubt, the Supplier's acceptance of the Supplier Agreement shall not guarantee the Supplier's acceptance into the DPS, which shall be subject to successful completion of the Accreditation and Enrolment
- 3.2 In the event of a conflict between the terms of any of the Contract Documents, then the documents shall take precedence in the following order:
- (a) The Service Agreement;
 - (b) The Supplier Agreement Terms and Conditions set out in Schedule 1 to this Supplier Agreement
 - (c) The Supplier Agreement;
 - (d) The DPS Entry Guide;
 - (e) The Self-Billing Agreement
- 3.3 The Council may at its absolute discretion and from time to time, order Services from the Supplier in accordance with the procedure set out in the DPS Entry Guide. The Supplier acknowledges that there is no obligation whatsoever on the Council to purchase any Services from the Supplier during the Term. Notwithstanding the fact that the Council has followed the procedure set out in this Supplier Agreement or DPS Entry Guide, the Council shall be entitled at all times to decline to make an award for its Requirement.
- 3.4 The Council may update the DPS Entry Guide and Supplier Agreement Terms and Conditions at any time throughout the Term of the Contract, provided that the Council provides all suppliers with fair and open access to such changes with reasonable advance notice.
- 3.5 The Supplier warrants that all information submitted within the Accreditation and Enrolment is correct and accurate at the time of submission and shall ensure that all necessary and appropriate Accreditation and Enrolment checks and details are kept up to date throughout the Term. In the event that the Supplier's status or compliance to any of the Selection Criteria changes throughout the Term of the Contract, then the Supplier shall inform the Council immediately and the Supplier acknowledges that the Council reserves the right to, at its sole discretion, expel the Supplier from the DPS, dependent upon the nature of such changes, particularly if such changes are to the detriment of the performance or standards of this Contract.

- 3.6 The Council reserves the right to request re-submission of any Selection Criteria or other Accreditation or Enrolment details throughout the duration of the Contract, and may perform audit checks of any such or existing Accreditation or Enrolment information.
- 3.7 The Supplier acknowledges that once agreed via the Application, a Service Agreement is a legally binding agreement between the Supplier and the Council and must be adhered to in accordance with the terms of the Contract. This Supplier Agreement shall govern the relationship between the Council and the Supplier in respect of the provision of the Services by the Supplier to the Council.

4. DPS PROCESS

- 4.1 The Council shall:
- 4.1.1 offer all potential suppliers unrestricted, direct access to all appropriate documents, including the template Contract Documents and Selection Criteria by electronic means and to any additional documents relating to the provision of the Service from the date of publication of the contract notice to the date when the system ceases to be operated;
 - 4.1.2 give any potential suppliers the opportunity to submit a request to participate in the DPS via the Application to proceed through the Accreditation and Enrolment process on to the DPS. Admission into the DPS is subject to the Supplier satisfying the Selection Criteria, passing the Council's review of the request to participate, and submitting a request to participate which complies with the Contract Documents and any additional documents produced by the Council;
 - 4.1.3 complete the evaluation of each request to participate in the DPS within ten (10) Working Days from the date of its submission or such longer period as the Council may determine;
 - 4.1.4 invite all applicable suppliers who have been admitted to the DPS to submit an Offer for each applicable Requirement within a time limit specified by the Council;
 - 4.1.5 enter into a Service Agreement with the supplier who submits the Offer which best meets the Requirement and its appropriate award criteria, as may be specified in the Contract Documents, when choosing to enter into a contract via the DPS.

5. PROCUREMENT PROCESS

- 5.1 The Supplier acknowledges and accepts that Services shall be procured and/or transacted in accordance with the procedures detailed in the Contract.
- 5.2 The Supplier shall submit all Offers within the Application in accordance with the procedures detailed in the DPS Entry Guide, this Supplier Agreement, and as may be further supplemented within the Requirement.
- 5.3 The Supplier shall submit all Offers within the Application within a timely manner and no later than the deadlines established within the requisite Requirement or shall otherwise be excluded from the procurement process within the Application. Below is a table of suggested response times:

Requirement to be filled within	Open for Offers period
4 hours	1 hour
24 hours	8 hours
3 days	1 day
1 week	3 days
2 weeks or more	3 days

- 5.4 The Supplier shall submit all Service Receipts within the Application within a timely manner. The Council reserves the right to consolidate each Service Receipt into such frequent Self-Bill Invoices as set out in the Self-Bill Agreement.
- 5.5 The Supplier agrees and acknowledges that all transactions governed by the Contract will be processed via the Application. The Supplier shall not endeavour to process Requirements or Services for the Council that have been subject to the DPS outside of the Application.
- 5.6 The Supplier shall ensure that the Services are provided in accordance with the Requirements, the consequent Service Agreement and the Contract Documents overall. Further, on request at any time, the Supplier must be able to evidence compliance with the same.
- 5.7 The Council reserves the right to operate an E-auction when awarding a Requirement so that suppliers may competitively reduce their Offer's price.
- 5.8 Where a Requirement is issued to the Supplier it shall state the type of or part of the Services required including the Council's necessary timescale for delivery of those Services.
- 5.9 The Supplier acknowledges that users of the Application may submit a quality review or summary of the Supplier's performance under this Contract. Such reviews shall comprise the opinion of those submitting such comments only and not those of the Council. The Application shall have a facility to report any abusive or derogatory comments, and the Council shall deal with such instances as the Council deems reasonably necessary.
- 5.10 If an Offer appears to be abnormally low, the Council may reject the Offer but only if it has:
- 5.10.1 requested in writing from the Application Provider details of the constituent elements of the Offer which are considered to contribute to the Offer being abnormally low;
 - 5.10.2 taken account of the evidence supplied by the Supplier; and
 - 5.10.3 verified those constituent elements with the Supplier;

and concludes that the Supplier would not be able to carry out the Services to the required standards .

6. PAYMENT

- 6.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of the Contract, the Council shall pay the Charges to the Supplier in accordance with the Self-Billing Agreement.

- 6.2 The Council shall raise only raise a Self-Bill Invoice on behalf of the Supplier once the appropriate Service Receipt has been created and agreed between the Parties within the Application and becomes payable in accordance with the Self Billing Agreement.
- 6.3 The Council shall pay the Charges which have become payable in accordance with the Self-Billing Agreement within twenty (20) Working Days of the appropriate undisputed Self-Bill Invoice having been raised.
- 6.4 For the avoidance of doubt, the Supplier acknowledges and accepts that the Charges due for the Services provided under the Contract shall be paid by the Council via the Application Provider, acting as the Council's payment agent.
- 6.5 The Supplier must ensure that all of its employees, officers, agents and contractors are paid at least the national minimum wage, as legislatively applicable at the time of delivery of services

7. STATUTORY REQUIREMENTS

- 7.1 The Supplier shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of the Contract.

8. RECORDS AND AUDIT ACCESS

- 8.1 The Supplier shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of the Supplier Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Supplier Agreement and Service Agreements.

9. FREEDOM OF INFORMATION

- 9.1 The Supplier acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2003 and that the Council may be required to disclose the contents of the Contract in response to a request under the Freedom of Information Act 2000.

10. TERMINATION

10.1 Termination on Default

- 10.1.1 The Council may terminate this Supplier Agreement by serving written notice on the Supplier with effect from the date specified in such notice where the Supplier commits a Default under a Service Agreement and:-
- 10.1.2 the Supplier has not remedied the Default to the satisfaction of the Council within twenty (20) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or
- 10.1.3 the Default is not, in the reasonable opinion of the Council, capable of remedy

10.2 Termination on Financial Standing

The Council may terminate this Supplier Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where (in the reasonable opinion of the Council), there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which adversely impacts on the Supplier's ability to supply Services under this Supplier Agreement.

10.3 Termination on Insolvency and Change of Control

The Council may terminate this Supplier Agreement with immediate effect by notice in writing where the Supplier is a company and in respect of the Supplier:-

- 10.3.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- 10.3.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- 10.3.3 a petition is presented for its winding up (which is not dismissed within ten (10) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
- 10.3.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- 10.3.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- 10.3.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
- 10.3.7 being a "small company" within the meaning of Section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 10.3.8 any event similar to those listed in Clause 10.3.1 to Clause 10.3.7 occurs under the law of any other jurisdiction.

- 10.4 The Supplier shall notify the Council immediately if the Supplier undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("Change of Control"). The Council may terminate the Supplier Agreement by giving notice in writing to the Supplier with immediate effect within six (6) months of:-

- 10.4.1 being notified that a Change of Control has occurred; or
- 10.4.2 where no notification has been made, the date that the Council becomes aware of the Change of Control

but shall not be permitted to terminate where an written approval was granted by the Council prior to the Change of Control.

10.5 Termination by the Council

The Council shall have the right to terminate this Supplier Agreement, or to terminate the provision of any part of the Supplier Agreement at any time by giving three (3) months' written notice to the Supplier.

11. CONSEQUENCES OF TERMINATION AND EXPIRY

11.1 Notwithstanding the service of a notice to terminate this Supplier Agreement, the Supplier shall continue to fulfil its obligations under the Contract until the date of expiry or termination of the Supplier Agreement or such other date as required under this Clause 11.

11.2 Termination or expiry of this Supplier Agreement shall not cause any Service Agreement to terminate automatically. For the avoidance of doubt, all Service Agreements shall remain in force unless and until they are terminated or expire in accordance with their own terms.

12. LIABILITY

12.1 Neither Party excludes or limits its liability for:-

12.1.1 death or personal injury caused by its negligence, or that of its Staff;

12.1.2 fraud or fraudulent misrepresentation by it or its Staff; or

12.1.3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

12.2 The Supplier shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Supplier Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from, or any other loss which is caused directly or indirectly by any act or omission of the Supplier. This Clause shall not apply to the extent that the Supplier is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or Default, or the negligence or Default of its Staff or by any circumstances within its or their control.

13. INSURANCE

13.1 The Supplier shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Supplier under this Supplier Agreement or under the Service Agreement including death or personal injury, or loss of or damage to property.

14. TRANSFER AND SUB-CONTRACTING

14.1 This Supplier Agreement is personal to the Supplier and the Supplier shall not assign, novate or otherwise dispose of the Supplier Agreement or any part thereof without the previous consent in writing of the Council. The Supplier shall not be entitled to sub-contract any of its rights or obligations under this Supplier Agreement.

- 14.2 The Council shall be entitled to novate the Supplier Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Council provided that such assignment, novation or disposals shall not increase the burden of the Supplier's obligations under this Supplier Agreement.

15. VARIATIONS TO THE SUPPLIER AGREEMENT

- 15.1 Any variations to the Supplier Agreement may only be done by the Council and upon one (1) month's written notice to the Supplier.

16. RIGHTS OF THIRD PARTIES

- 16.1 Without prejudice to any rights granted by the Supplier Agreement to Application Provider or any Other Customers, a person who is not party to this Supplier Agreement ("Third Party") has no right to enforce any term of this Supplier Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties rescind this Supplier Agreement or vary any of its terms in accordance with the relevant provisions of this Supplier Agreement, such rescission or variation will not require the consent of any Third Party.

17. SEVERABILITY

- 17.1 such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Supplier Agreement had been executed with the invalid provision eliminated.

18. WAIVER

- 18.1 The failure of either Party to insist upon strict performance of any provision of the Supplier Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Supplier Agreement.

19. NOTICES

- 19.1 Except as otherwise expressly provided within this Supplier Agreement, no notice or other communication from one Party to the other shall have any validity under the Supplier Agreement unless made in writing by or on behalf of the Party and sent in accordance with the procedures detailed in the Application.

20. DISPUTE RESOLUTION

- 20.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Supplier Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the appropriate manager from each of the Parties.

21. LAW AND JURISDICTION

21.1 The Council and the Supplier accept the exclusive jurisdiction of the English courts and agree that the Supplier Agreement is to be governed by and construed according to English Law.