



## CALL-OFF SUPPORT SERVICES - TERMS & CONDITIONS

These terms and conditions apply where we agree to provide procurement support services to assist you in entering into a Call-Off Contract using an SPA Purchasing Solution.

These terms and conditions should be read in conjunction with the accompanying Letter of Appointment, which provides further details on the scope of the SPA Services that we will provide.

Please note that you will also be bound by the terms of any Call-Off Contract you may enter into using a Purchasing Solution, as well as the FAC1 Terms & Conditions that applies to the specific Purchasing Solution used for the relevant Call-Off Contract.

### 1. INTRODUCTION

Scottish Procurement Alliance (SPA), a collaborative approach for procurement in Scotland, was created both by and for organisations that purchase products and services for the construction, refurbishment and maintenance of social housing and public buildings throughout Scotland.

SPA is backed by LHC, one of the leading and most respected procurement organisations in the UK. LHC is a joint committee of local authorities acting as a central purchasing body on behalf of contracting authorities throughout mainland UK (including members of the Scottish Procurement Alliance) for whom LHC continues to monitor up to 500 live projects at any one time.

SPA's Procurement Solutions (being Framework Agreements and Dynamic Purchasing Systems) are all advertised and awarded by LHC in accordance with public sector procurement legislation.

You wish to enter into a Call-Off Contract with an Appointed Company pursuant to the Procurement Solutions and have asked us to provide the SPA Services to assist you in entering into that Call-Off Contract. We have agreed to provide the SPA Services to you, on and subject to the terms of the Agreement.

The parties to this Agreement are you and LHC. Scottish Procurement Alliance is acting on behalf of LHC in entering into this Agreement and in providing the SPA Services.

### 2. DEFINITIONS

In the Agreement, the following words and expressions will have the meanings given to them below (unless the context requires otherwise):

**Agreement** means the agreement between LHC and you for the provision of the SPA Services, which is made up of these terms and conditions and the Letter of Appointment;

**Appointed Companies** means the providers appointed as a potential suppliers of works, goods and/or services under the relevant Procurement Solution;

**Call-Off Contract** means a call-off contract entered into pursuant to a Procurement Solution;

**Call-Off Documentation** means the procurement documentation that is required to be prepared by you in connection with a proposed Call-Off Contract;

**Letter of Appointment** means the letter of appointment issued by us to you and signed by both parties that confirms the scope of the SPA Services;

**LHC** is a joint committee of local authorities acting as a central purchasing body on behalf of contracting authorities throughout mainland UK;



**Procurement Solution** means the relevant Framework Agreement(s) and/or Dynamic Purchasing System(s) (DPS) set up by LHC (on behalf of SPA) which allows the SPA users to call-off works, goods and/or services as required;

**SPA Services** means the procurement support services that we have agreed to provide to assist you in entering into a Call-Off Contract, which are described in the Letter of Appointment;

**we, us or our** means the Scottish Procurement Alliance, an unincorporated association of contracting authorities and other bodies involved in the construction, refurbishment and maintenance of social housing and public buildings in Scotland, acting on behalf of LHC in entering into this Agreement and in providing the SPA Services; and

**you or your** means the entity to which the Letter of Appointment is addressed.

### **3. APPOINTMENT AND TERM**

3.1 The Agreement will commence on the relevant date set out in the Letter of Appointment.

3.2 Unless terminated earlier in accordance with clause 6 below, the Agreement will continue until the date for completion of the SPA Services that is set out in the Letter of Appointment (or such later date as the parties may agree).

### **4. SUPPLY OF THE SPA SERVICES**

4.1 We will provide the SPA Services set out in the Agreement (including the Letter of Appointment) with reasonable care and skill.

4.2 We will use reasonable endeavours to comply with any timescales for provision of the SPA Services that are set out in the Letter of Appointment.

4.3 You agree to comply with your obligations set out in the Agreement (including in the Letter of Appointment).

4.4 You will:

4.4.1 co-operate with us in all matters relating to the SPA Services; and

4.4.2 provide (in a timely manner) such information as we may reasonably require in connection with the performance of the SPA Services, and will ensure that all information it provides is accurate and complete in all material respects.

### **5. SUSPENSION**

5.1 If either party is prevented from carrying out its obligations under the Agreement (other than an obligation to pay amounts properly due to the other party) due to causes beyond its reasonable control then, subject to clauses 5.2 and 5.3, that party's obligations under the Agreement will be suspended to the extent (and for such period) that the party is prevented from performing its obligations.

5.2 The party concerned will give notice of suspension as soon as reasonably possible to the other party stating the date and extent of the suspension and its cause, and will resume the performance of those obligations as soon as reasonably possible after the removal of the cause.



5.3 In the event that suspension under this clause 5 continues for more than one month, either party may terminate the Agreement immediately on providing notice to the other party (and without liability to the other party).

## **6. TERMINATION**

6.1 Either party may terminate the Agreement with immediate effect on providing notice to the other party if:

6.1.1 the other party is in material breach of any of its obligations under the Agreement and that material breach is incapable of being remedied or, if it is capable of being remedied, the other party has failed to remedy that material breach within 30 days of notice from that party; and/or

6.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business.

6.2 In addition to each party's rights of termination under clause 6.1, the Agreement may be terminated by either party giving to the other party at least one month's notice in writing.

6.3 On the termination of the Agreement for any reason:

6.3.1 we will return any of your books, documents, papers and other property which relates specifically to the performance of the SPA Services that may then be in our possession or under our control (except to the extent that we are required to retain any of the same in order to comply with any law or other duty that applies to us);

6.3.2 any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement will remain in full force and effect; and

6.3.4 termination or expiry of the Agreement will not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry.

## **7. ASSIGNATION AND CONFIDENTIALITY**

7.1 Neither party will delegate, assign or sub-contract the performance of any of its rights, duties or obligations arising under the Agreement without the prior written approval of the other party.

7.2 Each party undertakes that it will not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 7.3.

7.3 Each party may disclose the other party's confidential information:

7.3.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party will ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with clause 7.2; and



7.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

7.4 Neither party will use any other party's confidential information for any purpose other than to perform its obligations under the Agreement or under any contractual or other arrangement between the parties.

## **8. LIABILITY**

8.1 We have agreed to perform the SPA Services in order to assist you in entering into a Call-Off Contract using a Procurement Solution. The parties expressly acknowledge and agree that the exclusions and limitations of liability set out in this clause 8 are reasonable and appropriate in the context of the Agreement, including, in particular, having regard to (a) our purpose and status, being a not-for-profit organisation designed to assist its members and users by enabling Procurement Solutions and (b) the nature of the relationship of the parties (you being one of our members and/or users) and (c) the fact that we are not charging a fee to you for the provision of the SPA Services.

8.2 Nothing in the Agreement will limit or exclude either party's liability for: (a) death or personal injury arising from its negligence; (b) fraud; and/or (c) any other liability that it cannot limit or exclude under applicable law.

8.3 Subject to clause 8.2, the parties agree that:

8.3.1 you have sole responsibility for: (a) approving all documentation, actions and recommendations that may be made, proposed or provided by us in connection with the provision of the SPA Services; and (b) ensuring that its use of the relevant Procurement Solutions and the award of any Call-Off Contract is compliant with its own internal procurement rules and regulations and applicable laws. Neither we nor LHC has any liability to you in connection with the matters described in clause 8.3.1;

8.3.2 neither we nor LHC has any responsibility or liability to you (or any other person) in connection with the selection, use, performance and/or non-performance of any Procurement Solution and/or Call-Off Contract; and

8.3.4 the maximum aggregate liability of us (and LHC) under and/or in connection with the Agreement and the SPA Services (whether arising under contract, delict, tort, negligence or otherwise) will not exceed an amount of £1,000.

8.4 You will indemnify and keep indemnified us (and LHC) on demand from and against any loss, damage, claim, proceedings, expense, cost or liability which we, LHC and/or any of their respective trustees, officers, directors or employees suffers or incurs (or is liable to suffer or incur) arising out of or in connection with:

8.4.1 any breach by you of any of the terms of the Agreement; and/or

8.4.2 the selection, use, performance and/or non-performance of any Procurement Solution and/or Call-Off Contract.

8.5 To the fullest extent permitted by applicable law, your rights and remedies under the Agreement exclude and are in place of any warranties, rights and/or remedies that may be implied under law or statute.



8.6 You acknowledge and agree that the trustees, directors, officers and employees of us and LHC have no personal liability to you under and/or in connection with the SPA Services and/or the Agreement.

**9. GENERAL**

9.1 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

9.2 A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy.

9.3 If any provision of the Agreement is found to be illegal or unenforceable in whole or in part, the other provisions of the Agreement and the remainder of the relevant provision will continue in full force and effect.

9.4 This Agreement does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 for any third party to enforce or otherwise invoke any term of this Agreement.

9.5 The Agreement will be governed by and construed in accordance with the laws of Scotland. Each party agrees that the Scottish Courts will have exclusive jurisdiction in respect of any disputes arising out of or in connection with the Agreement.