

## Terms and Conditions 'Buyers'

### Version Control

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1.00	2 <sup>nd</sup> January 2018	CEO
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Local Supply Chain is an online platform run, owned and operated by Firefly Online Ltd

This document sets out the additional Terms and Conditions applicable to your registration as a Buyer and together with the documents referred to in it (the "Proposal") governs the relationship between you and Firefly Online Limited (Company number 06481401), whose registered office address is at Totemic House, Springfield Business Park, Caunt Road, Grantham, Lincolnshire, NG31 7FZ, ("us", "we" or "Firefly").

**This Agreement forms a legally binding contract between you and Firefly.**

### 0. Definitions

In these terms and conditions the following words have the following meanings:

<b>Account</b>	means the Account created by a member on registration (or issued by our helpdesk) and all associated information.
<b>Award</b>	means an 'intent to award' a contract by a Buyer to a Supplier. An award <b>is not</b> an instruction (or order) to proceed with the services detailed within the work package tender
<b>Supplier Office</b>	means a place of business which has been registered as a location from which a Supplier operates their business.
<b>Content</b>	means any text, graphics, link, program or other information which is capable of protection by any form of intellectual property right.
<b>Consumer</b>	means an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession.
<b>Buyer or 'you'</b>	means you and (where the context requires) an organisation that has become a member of the website to utilise the platform and source the services offered by suppliers and/or trades people.
<b>Supplier</b>	Means an organisation or a trades person that has become a member of the website to offer services, and respond to requests issued by Buyers.
<b>Trades Person</b>	An individual that has become a member of the website to offer trades specific skills and respond to requests issued by buyers.
<b>Framework</b>	A procurement arrangement that enables an organisation to purchase the services of suppliers via Traditional Framework or Dynamic Purchasing System (DPS).
<b>Members</b>	means an organisation (or person) that has registered with the online platform and created an account. The platform supports

	<p>several types of members:</p> <p><b>Client:</b> The Client is the organisation for whom the project is carried out</p> <p><b>Main Contractor</b> is the organisation that is responsible for carrying out the construction activity</p> <p><b>Sub-Contractor</b> is a person or organisation that does part of the job that the main contractor is responsible for and may also contract all or some of this work to one or more trades persons, social enterprise(s) and/or Micro business(es)</p> <p><b>Consultant:</b> is a person or organisation that is generally appointed by the Client or Main Contractor to perform expert tasks for the project and may also contract all or some of this work to one or more trades persons, social enterprise(s) and/or Micro business(es)</p> <p><b>Micro Business</b> – is a person or organisation who has self-certified and have met the criteria as stated on the LSC website</p> <p><b>Trades Person / People</b> – an individual who is skilled in one or more trades and is looking to work for buyers directly or for subcontractors who are contracted to work for buyers</p> <p><b>Social Enterprise</b> – is a person or organisation who has self-certified and have met the criteria as stated on the LSC website</p> <p><i>Members are generally 'buyers' or 'suppliers' on the platform (although some members can be both)</i></p>
<b>Online Platform</b>	means Local Supply Chain (LSC), Performance 365 and/or Work Radar.
<b>Profile</b>	means the information provided by a member about its organisation and any associated information about the Member's use of the Website Services which is viewable to other members.
<b>Project</b>	means the information regarding a project that has been created on the website. The project may contain Work Packages.
<b>Services</b>	means the services provided by a supplier to a buyer in fulfilment of a Work Package or Tender.
<b>Expression of Interest (EOI)</b>	An invitation for a supplier and/or tradesperson to express their interest in receiving a tender from either a main contractor or a subcontractor
<b>Work Package / Tender</b>	An invitation to express an interest (EOI), provide prices for estimating purposes (TENDER at ENQUIRY stage), or provide firm quotes for 'secured' work (TENDER at CONTRACT Stage) as requested by buyers and/or Subcontractors on the Website.
<b>User</b>	A person that has access to the Local Supply Chain platform which is inclusive of the Work Radar and Performance 365 modules
<b>Verify / Verified</b>	Means the basic checking of data uploaded by a Supplier. Our verification service is not an approval to work for a buyer (who are responsible for undertaking their own checks)
<b>Website</b>	means our website at <a href="http://www.localsupplychain.co.uk">www.localsupplychain.co.uk</a> ,

	www.workradar.co.uk or such other website through which the marketplace and services are provided from time to time.
<b>Website Services</b>	the services provided by the Website, including the platform and associated functionality and professional services as may be required, extended or varied from time to time.

For the purposes of these terms and conditions, a reference to "writing" or "written" includes email and any information provided in a Profile or through a Project or Work Package description.

- 0.1** Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 0.2** A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 0.3** A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 0.4** Words in the singular shall include the plural and vice versa and a reference to one gender shall include a reference to the other genders.
- 0.5** A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 0.6** References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

## **1. Our Rights and Obligations**

- 1.1 Subject to payment of the Licence Fee by or for your organisation (or by other agreement directly with ourselves), we grant you a non-exclusive, non-transferable right to access the online platform solely for usual business operations.
- 1.2 We shall provide the online platform to you in accordance with the terms of this Agreement using reasonable care and skill and the Software shall conform with the description detailed within Schedule 1
- 1.3 We shall use commercially reasonable endeavours to provide a service level availability for the online platform of 99% each month
- 1.4 We will provide support for your Users, offered by e-mail or via our telephone helpdesk (9am-5pm Mon-Thu, 9am-4pm Fri, except Bank Holidays)
- 1.5 The Software is provided on an "as is" basis and it is your responsibility to ensure that it fulfils your requirements

- 1.6 We warrant that we have and will maintain all necessary licences, consents, and permissions necessary for the performance of our obligations under this Agreement.
- 1.7 We shall update the Software from time to time to provide upgrades, bug fixes and patches. Software Upgrades and Bug fixes are offered free of charge to Users. Any new modules developed by us will be out of scope and will be subject to a separate agreement
- 1.8 We shall use reasonable commercial endeavours to prevent unauthorised access to the online platform

## **2. Your Rights and Obligations**

- 2.1 You may access the online platform from our website or from a branded site that we may provide to you. (you may also be offered access to our demonstration environments)
- 2.2 You shall not allow your password or log in details to be shared with any other person
- 2.3 You shall:
  - 2.3.1 keep a secure password for the online platform and keep this password confidential;
  - 2.3.2 ensure that you will use the online platform in accordance with the terms of this Agreement and shall be responsible for any breach of this Agreement;
  - 2.3.3 comply with all applicable laws and regulations with respect to your activities under this Agreement;
  - 2.3.4 ensure that your network and systems are up to date and fit for purpose
  - 2.3.5 ensure that you access the online platform via:
    - Internet Explorer version 11 (or above)
    - Google Chrome
    - Safari
    - Firefox
    - Microsoft Edge
- 2.4 You shall not access, store, distribute or transmit any viruses or any material on the platform that is illegal or unlawful
- 2.5 not attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means or attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the

Software or access all or any part of the Services in order to build a product or service which competes with the Services or use the Services to provide services to third parties or license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause.

- 2.6 Shall use all reasonable endeavours to ensure the information you provide about a Project or Work package is complete and accurate and that you will immediately update the information if it changes or becomes misleading.
- 2.7 You consent to us making the information contained in Projects and Work Packages (which may include your or your employee's personal information) available to appropriate Members on the Website.
- 2.8 You acknowledge that we are totally reliant on Suppliers (and third parties) uploading accurate data to the website and for the updating of this data. You acknowledge that each user on the platform is responsible for inputting only accurate data to provide a true understanding of either themselves or associated organisation.
- 2.9 You acknowledge that you are entirely responsible for undertaking your own assessments of suppliers, including verification of data along with any further checks that you may need to undertake.
- 2.10 You are responsible for agreeing and entering into contracts with your suppliers. We are not involved in the contract between you (as a buyer) and the successful supplier and you accept that all matters relating to the provision of the Services, including payment, are to be resolved between you and the supplier.
- 2.11 shall use all reasonable endeavours to prevent any unauthorised access to the platform, in the event of any such unauthorised access or use you will promptly notify us

### **3. Your Content**

- 3.1 You retain all of your ownership rights in the Content you post to the Website. However, when you post Content to the website you are granting, or warranting that the owner of such Content has expressly granted, to us a worldwide, royalty-free, perpetual, irrevocable, fully sub-licensable, non-exclusive right to use, reproduce, modify, transmit, distribute, perform, display and delete such Content (in whole or in part) and/or incorporate such Content.
- 3.2 You agree to indemnify us against any claims that Content you have posted breaches a third party's intellectual property rights and acknowledge that we have the right to disclose your identity to any third party who is claiming that any Content you have posted

constitutes a violation of their intellectual property rights, right to privacy or is unlawful in any way.

3.3 You accept we may remove without prior notice to you any Content you post which we in our absolute discretion consider does not or may not comply this Agreement, including our Acceptable Use Policy.

3.4 If Content is deleted we will use reasonable efforts to remove it from the Website, but you acknowledge that caching or references to the Content may not be made immediately unavailable.

#### **4. Fees and payment**

4.1 Our fees for the online platform and associated services will be detailed in our proposal to you.

4.2 Our proposal together with these terms & conditions form a legally binding agreement between you and Firefly

4.3 Our standard payment terms are 30 days from date of invoice

#### **5. Intellectual Property Rights**

5.1 You acknowledge and agree that we own all intellectual property rights in the online platform software and associated services.

5.2 We acknowledge and agree that you own all intellectual property rights for your data stored on the online platform.

5.3 In the event of any loss or damage to your data, your sole and exclusive remedy shall be for us to use reasonable commercial endeavours to restore the lost or damaged data on your behalf.

#### **6. Confidentiality**

6.1 We shall both hold the other's Confidential Information in strict confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than in accordance of this Agreement.

6.2 We acknowledge that your data is the Confidential Information of your Company

#### **7. Indemnity**

7.1 You shall defend, indemnify and hold harmless us against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with your use of the online platform and associated services, provided that:

7.1.1 Your organisation is given prompt notice of any such claim;

- 7.1.2 We provide reasonable co-operation to your organisation in the defence and settlement of such claim, at your expense; and
- 7.1.3 You are given sole authority to defend or settle the claim.
- 7.2 We shall defend you, against any claim that the online platform or Services infringes any third party registered UK patent effective as of the date of this Agreement, copyright or database right and shall indemnify you for any amounts awarded against you in judgment or settlement of such claims, provided that:
  - 7.2.1 We are given prompt notice of any such claim;
  - 7.2.2 You provide reasonable co-operation to us in the defence and settlement of such claim, at our expense; and
  - 7.2.3 We are given sole authority to defend or settle the claim.
- 7.3 In the defence or settlement of any claim, we may procure the right for you to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement immediately by giving notice to you
- 7.4 In no event shall we, our employees, agents and sub-contractors be liable to you to the extent that the alleged infringement is based on:
  - 7.4.1 a modification of the online platform or Services by anyone other than us; or
  - 7.4.2 your use of the online platform or services in a manner contrary to the instructions given to you; or
  - 7.4.3 your use of the online platform or services after notice of the alleged or actual infringement from us or any appropriate authority.

## **8. Limitation of Liability**

- 8.1 Although we ask members for certain information relating to their identity we do not warrant this information has been confirmed or verified and we are not responsible for ensuring the accuracy or truthfulness of members' purported identities or the validity of the information that they provide to us. You are responsible for correctly identifying a member before entering any form of agreement with that member.
- 8.2 Subject to Clause 7.3 below, we shall have no liability for any loss of profits, anticipated savings, business opportunity, goodwill or loss of or damage to data or any indirect or consequential losses whether arising in contract, tort (including negligence) or otherwise incurred by you in connection with the online platform or associated services
- 8.3 Nothing in this Agreement shall limit or exclude our liability for fraud, fraudulent misrepresentation, for death or personal injury resulting

from our negligence or the negligence of our agents or employees or for any other liability that cannot be limited or excluded by law.

## **9. Term and termination**

- 9.1 The start and renewal dates for this agreement will be detailed as part of our proposal to you
- 9.2 We may terminate or suspend your Account at any time in the event that you breach any of the terms of this Agreement. For the avoidance of doubt, you will continue to be bound by the terms of any contracts you have entered directly with any Suppliers.

## **10. Dispute Resolution**

- 10.1 If a dispute arises out of or in connection with this Agreement then you shall follow the procedure set out in this clause:
  - 10.1.1 either party shall give to the other written notice of the dispute, setting out its nature and full particulars and the account manager from each party shall attempt in good faith to resolve the dispute;
  - 10.1.2 if the parties are for any reason unable to resolve the dispute within 10 Business Days of service of the written dispute notice, the dispute shall be referred to a senior officer of each party who shall attempt in good faith to resolve it; and
  - 10.1.3 if the senior officers are for any reason unable to resolve the dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 15 Business Days after the date of the ADR notice.
- 10.2 No party may commence any court proceedings in relation to the whole or part of the dispute until 30 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 10.3 If the dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days, or the mediation terminates before the expiration of the said period of 30 days, the dispute shall be finally resolved by the courts of England

## **11. Force majeure**

Neither party shall be liable to the other party under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement (save for obligations to make payment) by acts, events, omissions or accidents



beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, extreme adverse weather condition, provided that it notifies the other as soon as reasonable practicable and makes reasonable commercial efforts to mitigate the effect of such an event.

## **12. Waiver**

- 12.1 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 12.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

## **13. Entire agreement**

- 13.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 13.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

## **14. Assignment**

Neither party may, without the prior written consent of the other, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

## **15. No partnership or agency**

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **16. Third party rights**

This Agreement does not confer any rights on any person or party other than the parties to this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

**17. Governing law and jurisdiction**

This Agreement is governed by and construed in accordance with the laws of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England.

## Schedule 1: High Level description of LSC service

### 1. Your Account

- 1.1 The first user from your organisation may register and create an Account to become a Buyer (or maybe issued registration details from our helpdesk). Subsequent users for your organisation maybe invited to register by existing users or by our helpdesk
- 1.2 On registration and subsequent login(s) you reaffirm your agreement and undertake to comply with:

Terms and Conditions

<https://www.localsupplychain.co.uk/documents/lscclienttermsandconditions.pdf>

Privacy Policy

<https://www.localsupplychain.co.uk/Documents/LSCPrivacyPolicy.pdf>

Acceptable Use Policy

<https://www.localsupplychain.co.uk/Documents/LSCAcceptableUsePolicy.pdf>

You also warrant and undertake that you have the necessary authority to enter this Agreement on behalf of your organisation.

- 1.3 You agree that we may use your company logo and company name on our website(s) and for our own Marketing purposes.
- 1.4 You agree to only share information from Work Radar with suppliers who you have awarded a contract, with which the suppliers whom opted in for work radar have expressly expressed interest in

### 2. The LSC online platform

- 2.1 The purpose of the platform is to help Buyers to source, engage and manage suppliers who are able to provide the required Service(s).
- 2.2 Depending on the licence we issue (detailed within our proposal to you), your users will have access to the following menu options
  - 2.2.1 **Home:** A dashboard for each User. The dashboard provides important information regarding the user's Projects, Procurements and Performance
  - 2.2.2 **Frameworks:** An area whereby frameworks can be managed
  - 2.2.3 **Projects:** provides lists of projects (by stage) with further drill down to individual procurement dashboards
  - 2.2.4 **Enquiries:** Provides a list of Work Packages, with drill down to procurement dashboards
  - 2.2.5 **Orders:** Provides a list of orders created on the platform
  - 2.2.6 **Performance:** an area where performance can be monitored
  - 2.2.7 **Clients:** An area to view Client records on the platform
  - 2.2.8 **Main Contractors:** An area to view Main Contractors records on the platform
  - 2.2.9 **Sub Contractors:** a searchable database of subcontractors on the platform with links to profile information
  - 2.2.10 **Consultants:** a searchable database of consultants on the platform with links to profile information
  - 2.2.11 **Tasks:** an area whereby a User can manage tasks that may be assigned to them
  - 2.2.12 **Users:** an area to manage users for your organisation

- 2.3 Buyers wishing to engage Suppliers may use the site to Source suppliers from frameworks, the local market or from Work Radar
- 2.4 Buyers can create Work Packages and request suppliers to respond to:
  - 2.4.1 **Expression of Interest:** early stage tenders whereby the Buyer wishes to find members who are willing to provide prices
  - 2.4.2 **Enquiry (Invitation to Tender):** issued by Buyers to gain prices from members for stated work package services
- 2.5 Suppliers can respond to EOI's & Enquiries that are issued to them from Buyers.
- 2.6 Enquiries will remain open for the period of time specified by Buyers
- 2.7 Buyers can issue 'Awards' on the platform, this **is not** an instruction (or order) to proceed with the services.
- 2.8 Information regarding a 'decline' on the platform will be visible to the appropriate supplier
- 2.9 LSC offers an optional verification service for suppliers who wish to upgrade their accounts. The upgrade also unlocks a range of additional benefits that may be viewed on our website.

Richard Ratcliffe  
CEO