

Due Diligence Policy

PURPOSE:

This policy aims to mitigate risk and to identify sustainable and professional external relationships, avoiding a negative impact on the College's reputation and/or financial health. In doing so this policy bears relevance to the College's Corporate and Social Responsibility policy. Such relationships could include:

- ad-hoc relationships
- technical/professional relationships
- social/community relationships
- partner relationships
- commercial relationships

Improving public services requires innovation to seize new opportunities whilst managing the risks involved. This procedure therefore supports the College's risk management strategy when forming new relationships with suppliers whether under:

- a partnership/collaboration agreement
- joint venture agreement
- under a supply or service contract
- a property contract

PROCEDURES:

For all business relationships being considered, a due diligence request should be made to the Finance Team prior to commencement of the Business relationship. For property matters (including transactions) this request should be made as soon as possible after the project plan disposal or acquisition is known.

The Business Training Team will carry out the checks for sub-contracting of provision and keep a record in accordance with this procedure.

Where the College are looking to engage with an individual, either via their own limited company or personal service company, additional checks must to be carried out to ascertain whether the person is self-employed or not, based on Revenue & Customs criteria and via an online Employment Status Check tool (ESI). The results of this will be fed back to the requestor and/or individual.

Requests should be emailed to finance-office@eastkent.ac.uk

The Finance Team will then complete a due diligence check based on the information provided, depending on the value and the type of relationship being formed on behalf of the College.

Once the supplier has been approved, the requestor is informed of the result and the supplier is given the contact details for the College, and requested to accept orders via approved Purchase Orders only.

In accordance with anti-bribery legislation, a declaration of interests form (Appendix C) will need to be completed by all budget holders on an annual basis.

The declaration and due diligence results will be stored for a period of 3 years by the College for audit purposes.

Levels of Due Diligence Check

Value of goods or services

- Under £2,000 – joint responsibility between both the Finance Team and the requestor.
- between £2,000 and £10,000 - Finance will carry out the due diligence checks (Companies House, Insurance, Press Research and in-date industry certificates) and request one customer reference
- over £10,000 - Finance will carry out the due diligence checks (Companies House, Insurance, Press Research, in-date industry certificates), request two customer references and perform financial checks.

In exceptional circumstances the Principal or Deputy Principal may authorise deviation from the above procedure.

Suppliers that receive special treatment:

The following types of supply will not require reference providing all other checks are satisfactory

Type of Supply

Level of Check: Grade 1 Plus (Completion of Appendix B in all cases)

Travel (e.g. bus, rail, airline)

Check membership of Trade Association and Industry Licences. review T&Cs (for refund policy in the event of not being able to travel for example)

Events (e.g. conference, tickets)

review T&Cs

National Retailers (e.g. Tesco, Debenhams)

review T&Cs

Hotel/Accommodation (e.g. Travelodge)

review T&Cs

Not for Profit Organisations (e.g. schools, colleges, charities)

review T&Cs

Legal advisors

Professional Indemnity Insurance details

Currently on a Procurement Framework (e.g. purchasing consortium)

Finance to check the framework

The form to use for requesting a new supplier:

APPENDIX B

DUE DILIGENCE CHECKLIST– INTERNAL USE ONLY

Check

Responsibility for

Details

Company Name

Requestor

Address

Requestor

Organisation Type

(Charity, Public Limited, Private Limited, Sole Trader/Self Employed, Other)

Requestor

Email Address

Requestor

Registration or Charity Number

Requestor

Type and purpose of contract

Requestor

Contract Value*

Requestor

Completed by:

Name

Policy Owner: Head of Finance
Approving Body: Policy Committee
Date of approval: September 2017
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Position

Date

Once completed, please return to finance-office@eastkent.ac.uk

***Please be aware that the contract value affects the number of checks that will be carried out and the greater the value, the more time it is likely to take:**

0-£2,000 no references required;

£2,001 - £10,000 one reference required

£10,000+ two references required

The form completed by Budget Holders on an annual basis:

APPENDIX C
DECLARATION OF INTERESTS FORM

I..... (name here)
as..... (staff position) at East Kent College have set out below my interests. I confirm that I am committed to the highest standards of ethical conduct and integrity in business activities within the UK and overseas. As an employee and individual acting on East Kent College's behalf, I accept responsibility for maintaining the organisation's reputation and for conducting College business honestly and professionally.

Category

Please give details of the interest and whether it applies to yourself or, where appropriate, a member of your immediate family, employer or some other personal connection.

Current employment and any previous employment in which you continue to have a financial interest.

Appointments (voluntary or otherwise) e.g. trusteeships, directorships, local authority memberships, magistracy, tribunals etc.

Membership of any professional bodies, special interest groups or mutual support organisations.

Companies in which you hold more than 1% of the share capital.

Gifts or hospitality in excess of **£50** accepted from suppliers of goods and services in the last twelve months.

Any contractual relationship with any company or other organisation connected with the College.

Any other interests which you consider are appropriate to disclose and are not covered by the above (such as family connections).

Signed..... Date.....

The form sent to suppliers who are private/public limited companies or charities:

APPENDIX D – DUE DILIGENCE CHECKLIST

Please complete the form as fully as possible. If you have any queries please contact:

jennie.causton@eastkent.ac.uk

Check

Details

*** Company Name**

(Please indicate if trading under an umbrella company)

*** Organisation Type**

(Charity, Public Limited, Private Limited, Sole Trader/Self Employed, Other)

***Registration or Charity Number**

***Addresses**

(Registered and trading addresses if applicable)

***Telephone Number**

***Email Address for purchase orders**

***Email Address for remittance advice**

(If different from above)

***Bank Name**

***Bank Branch**

***Bank Sort Code**

***Bank A/C number**

***Name on the account**

***External Reference**

Please provide the name, company and email address of referees.

One referee - £2,000 -£10,000

Two referees - £10,000+

1

Type and purpose of contract

2

Compliant with legislation and regulation including:

- **Data Protection**
- **Health & Safety**
- **Anti-Bribery**
- **Equality**
- **Environmental**
- **Safeguarding & PREVENT(if relevant)**
- **Modern Slavery**

Please provide copies of relevant policies

3

Complaint/Quality Assurance Policy

Please provide copies of relevant policies

4

Current Public Liability and/or Product Liability Insurance cover

Please provide copies

5

Who will be supplying the contract?

Completed by:

Name

Position

Date

Once completed, please return to finance-office@eastkent.ac.uk

The contract sent to self-employed suppliers:

Terms and Conditions for Self-Employed Suppliers

1 Introduction and Definitions

This Agreement is between East Kent College (the College) and the Supplier (name and company name here) as outlined in the schedule of services (schedule) included in this document.

The Agreement will be in accordance with the following terms and conditions unless and until an alternative is specifically agreed between the parties and set out in a revised schedule.

2 Purpose of the Agreement

The purpose of the Agreement is to supply the services as outlined in the schedule.

3 Commencement date and duration of the Agreement

This agreement will commence on the date specified on the schedule. The Supplier should consult with the College before arranging for a substitute person to undertake the services detailed.

4 Fees and expenses

The fee is stated on the schedule. Where necessary, VAT will be added at the appropriate rate.

The Supplier will invoice the College. The invoice should itemise the work undertaken.

Payment will only be made for work completed to the standard required by the College.

Payment will only be made to the account of the Supplier named on the Letter of Engagement and invoices must state a purchase order number (PO No).

5 Invoices and payment

Unless specifically agreed otherwise (and set out in the schedule), invoices will be submitted monthly by the Supplier and payment made within 30 days.

6 Taxation

The Supplier is deemed as a self-employed person (following HMRC status checks) and therefore is responsible for taxation and National Insurance or similar liabilities or contributions in respect of the fees and the Supplier will indemnify the College against all liability for the same and any costs, claims or expenses including interest and penalties.

7 Confidentiality

The Supplier hereby agrees that during the course of this appointment under this contract the Supplier may obtain knowledge of trade secrets and other confidential information with regard to the business and financial affairs of the College and those of the College's clients, customers and suppliers, details of which are not in the public domain ("Confidential Information") and accordingly the Supplier hereby undertakes to and covenants with the College that they:

- shall not at any time after the Termination Date use or procure the use of the name of the College in connection with the Supplier's own business or any other name in any way calculated to suggest that the Supplier continues to be connected with the business of the College or in any way hold the Supplier out as having such connection;
- shall not use the Confidential Information other than during the continuance of this contract and in connection with the provision of the Services; and
- shall not at any time (save as required by law) disclose or divulge to any person other than to officers or employees of the College whose province it is to know the same any Confidential Information and shall use best endeavours to prevent the publication or disclosure of any Confidential Information by any other person.

The restrictions set out above shall cease to apply to information or knowledge that comes into the public domain otherwise than by reason of the default by the Supplier.

The Supplier shall indemnify the College in respect of any claims, damages, losses or costs incurred as a consequence of any unauthorised disclosure by the Supplier of any Confidential Information.

- 8 Disclosure and Barring Service check (DBS)
The Supplier agrees to provide a DBS check where the manager commissioning the services of the Supplier has determined that a DBS is required. The Supplier is liable for the cost of the DBS check.
- 9 Policy and legislation
The Supplier agrees to abide by the organisation's health and safety policy, equal and diversity policy, safeguarding policy, customer service policy and code of professional conduct and to abide by all applicable UK legislation.
- 10 Insurance
The Supplier is expected to be properly insured for public liability and, where appropriate, employer liability contingencies.
- 11 Right to work in the UK
If the Supplier is not a national of an EEA member state, it is the responsibility of the Supplier to ensure that they have the appropriate visa to enter the UK to work for payment. When applying for a visa, they should explain the reasons for their visit to the UK. The College reserves the right to ask for evidence of the Supplier's right to work in the UK.
- 12 Dispute Resolution
Should there be any concern on the part of either the College or the Supplier in relation to the delivery of the Services under this Agreement; appropriate representatives from both parties shall promptly meet informally in the first instance, to attempt to resolve such concerns. If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation. The Supplier is responsible for the quality of their work and agrees to rectify any quality issues at their own expense.
- 13 Termination
Either party shall have the right at any time to terminate this contract by giving not less than four weeks' notice in writing to the other party.
In addition, the College shall have the right to terminate this contract at any time by summary notice without any payment in lieu in the event that the Supplier:
- is in material or persistent breach of any of the terms of this contract;
 - persistently and wilfully neglects or becomes incapable for any reason of efficiently performing the Services, including a failure to remedy any fault in work produced within a reasonable period of time of being notified of that fault; or
 - do any action manifestly prejudicial to the interests of the College or which may, in the opinion of the College, bring it into disrepute;
- and the Supplier shall have no claim against the College in respect of the termination of this appointment for any of the reasons specified above.
- 14 Tax liabilities
The parties declare and confirm that it is the intention of the parties that the Supplier shall be responsible for all income tax liabilities and national insurance or similar contributions in respect of the fees and accordingly the Supplier hereby agrees to indemnify the College in respect of any claims that may be made by the relevant authorities against the College in respect of income tax and national insurance or similar contributions relating to the Supplier's services under this contract.
- 15 Warranties
The Supplier warrants to the College that:
- by entering into this contract they will not be in breach of any obligations to or agreements with any third party;
 - they will take out and maintain throughout the term of this contract adequate insurance coverage to protect the Supplier and the College against any liabilities arising out of this contract and shall produce, on request, a copy of the insurance policy certificate for inspection by the College.

- 16 Data protection
The Supplier and the College agree to comply with all applicable data protection legislation, including but not limited to the Data Protection Act 1998 and any amendments thereto.
- 17 No employment
Nothing in this contract shall render or be deemed to render the Supplier as an employee or agent of the College and the Supplier hereby agrees that the Supplier is an independent contractor and not an employee or agent of the College. This contract does not create any mutuality of obligation between the Supplier and the College. The Supplier does not qualify for any company benefits from the College.
- 18 Force majeure
If either party to this contract is prevented or delayed in the performance of any of their respective obligations under this contract by "force majeure", then such party shall be excused from performance for so long as such cause or delay shall continue.
For the purposes of this contract, "force majeure" shall be deemed to be any cause affecting the performance of this contract arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of either party and shall include, but not be limited to:
- strikes, lockouts or other industrial action;
 - civil commotion, riot, act of terrorism, war threat or preparation for war;
 - fire, explosion, storm, flood, earthquake, subsidence, epidemic, bad weather or other natural physical disaster;
 - impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; and
 - political interference with the normal operations.
- 19 Entire agreement
This contract contains the entire agreement and understanding of the parties relating to the subject matter of this contract and extinguishes all previous agreements between the parties relating to the subject matter hereof.
- 20 Survival of causes of action
The termination of this contract howsoever occurring shall not affect the rights and liabilities of the parties already accrued at such time nor affect the continuance in force of such of its provisions as are expressed as or capable of having effect after such termination.
- 21 Waiver
The failure of any party to insist upon strict performance of any provision of this contract or the failure of any party to exercise any right or remedy to which he/she is entitled hereunder shall not constitute a waiver thereof and shall not cause a diminution of the obligations under this contract.
No waiver of any of the provisions of this contract shall be effective unless it is expressly stated to be such and signed by all the parties to this contract.
- 22 Severability
If any provision of this 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 this contract shall continue in full force and effect as if this agreement had been signed with the invalid, illegal or unenforceable provision eliminated.
- 23 Notices
Any notice to be given pursuant to the terms of this contract shall be in writing and shall be delivered by hand or sent by post to the address of the addressee as set out in this contract or such other address (being in Great Britain) as the addressee may from time to time have notified for the purpose of this clause, or sent by facsimile transmission to the addressee's fax number as from time to time notified.

24 Law and jurisdiction

i - In order to comply with IR35, it will be determined if the engagement is classed as **self-employed** upon completion of the ESI Tool on the HMRC website. (<http://tools.hmrc.gov.uk/esi/screen/ESI/en-GB/summary?user=guest>) Payment will be paid on submission of the invoice and the individual undertakes to take responsibility for paying all monies due to HMRC and maintaining accurate records.

ii - In order to comply with IR35, it will be determined if the engagement is classed as an **employee** upon completion of the ESI Tool on the HMRC website. (<http://tools.hmrc.gov.uk/esi/screen/ESI/en-GB/summary?user=guest>) Payment will be paid through payroll on the 25th of the month and all deductions due to HMRC will be made within this. Forms received before the cut-off date will be eligible for payment within that calendar month.

iii - This contract is governed by the laws of England and Wales and the parties submit to the jurisdiction of the courts of England and Wales. Please confirm the Supplier's acceptance of these terms by signing and dating the enclosed copy of this letter and returning it to me.

25 Other conditions

Any other conditions, including variations to the terms set out above, shall be included in the schedule.

Schedule of services

<http://tools.hmrc.gov.uk/esi/screen/ESI/en-GB/summary?user=guest>

*ESI Tool Reference:
(Please attach the PDF to the form)

Name of Supplier

Address of Supplier

Supplier Classification

HMRC - UTR:

Telephone number

Email address

Bank details

Bank Name:

Bank Address:

Sort Code:

Account Number:

Account Name:

Details of services to be provided

From

To

Name of College contact

Agreed by Manager commissioning the services of the Supplier
Name

Signature

Date

Agreed by the Supplier
Name

Signature

Date

*** Please note that if this is not included we will not be able to proceed with the application.**

N.B. Two copies of the terms and conditions to be sent to the Supplier, both signed by the Manager commissioning the services. The Supplier to sign both copies, retain one for their own records and send the other back to the commissioning Manager.

Once completed, please return to finance-office@eastkent.ac.uk