



STANDARD TERMS AND CONDITIONS OF CONTRACT

Services

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A GENERAL PROVISIONS

A1. Contract period

- A1.1 The Contract shall start on the Commencement Date and shall continue until the Expiry Date when it will terminate automatically without the need for notice unless it is terminated earlier or extended in accordance with the provisions of the Contract.
- A1.2 The Council shall have the option to extend the Contract provided the Contractor was advised of this option in the Procurement Documents /Letter of Award .
- A1.3 Having carried out a review of the Contractor's performance as detailed in Clause C9 (Monitoring of Contract performance), the Council may, at their sole option, offer to extend the Contract for the period specified in the Procurement Documents/Letter of Award subject to the availability of funding and the Council having secured all necessary approvals and being satisfied with the Contractor's financial standing.
- A1.4 The provisions of the Contract will apply subject to any modification agreed between the Parties in terms of Clause C5 (Change control process) throughout any such Extended Period

A2 Contractor's status

- A2.1 At all times during the Contract Period the Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

A3. Council's obligations

- A3.1 Save as otherwise expressly provided the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting party and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Contractor.
- A3.2 The Council shall provide such assistance and information as may reasonably be required by the Contractor to enable the Contractor to perform its obligations under the Contract.

A4. Notices

- A4.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- A4.2 Within 14 days of the Commencement Date both Parties will appoint a Nominated Person to receive communications in relation to the Contract and will notify the other Party of the contact details for their Nominated Person. These details will include the Nominated Person's name, business address, job title, email address (if appropriate) and a contact telephone number.

- A4.3 Any notice or other communication to be given by one Party (“the Notifying Party”) to the other (“the Receiving Party”) shall, where possible, in the first instance be sent by electronic mail to the email address of the Receiving Party’s Nominated Person. Provided the email is not returned as undeliverable it will be deemed to have been given four (4) hours after being sent. The Notifying Party will send the Receiving Party a letter confirming the dispatch of the electronic communication or if no electronic communication has been issued containing the notice/other communication by registered post / recorded delivery service addressed to the Receiving Party’s Nominated Person at their business address. Provided the letter is not returned as undelivered, it shall be deemed to have been given two (2) Working Days after the day on which the letter was posted or sooner where the Receiving Party acknowledges receipt of such letter . In proving service it shall be sufficient to prove that the envelope containing the notice or other communication was duly addressed to the Nominated Person at their business address and accepted by a universal postal provider for posting.
- A4.4 Either Party may change its address for service by serving a notice in accordance with this Clause A4.
- A4.5 Unless stated otherwise in the Procurement Documents or agreed between the Parties each Party’s Nominated Person shall also act as the appropriate contact point for any issues relating to the Contract or the Services to be provided under the Contract.

A5 Publicity

- A5.1 The Contractor shall not make any press announcements or publicise the Contract or any part thereof in any way, nor use the Council’s name or brand in any promotional or marketing material or announcements except with the Approval of the Council.
- A5.2 If so requested by the Council the notepaper and other written material of the Contractor and any Sub-contractors relating to the Contract shall carry only logos and markings which have received Council Approval. This may include, but shall not be limited to, such banner or logo as the Council shall use to identify the Contract from time to time. All publicity and marketing material produced by the Contractor (or its Sub-contractor) in relation to this Contract shall be submitted to the Council for Approval, and no such items shall be printed (other than for Approval purposes) until such Approval is received.

A6. Audit and access to Records

- A6.1 The Contractor shall keep and maintain full and accurate records and accounts of the operation of this Contract in accordance with Good Industry Practice for a minimum period of 5 years following the date of expiry/termination of the Contract (or for such other period as stated in the Procurement Documents or agreed between the Parties)
- A6.2 The Contractor shall provide the Council with access to all relevant records, including administration, management and staff records, in connection with all reasonable purposes associated with the Contract during normal working hours. In making such requests the Council shall act reasonably and shall treat all records provided in response to such requests as strictly private and confidential. The Contractor shall co-operate fully with all Council staff and other persons authorised by them for the purposes of ensuring and evaluating the Contractor’s performance under the Contract.

- A6.3 If requested to do so by the Council the Contractor will provide the Council with any financial information the Council reasonably requires which could include, but is not limited to, a copy of its annual accounts and annual returns.
- A6.4 If the Services include professional or consultancy services the Contractor shall keep complete records of all expenditures which are reimbursable by the Council and of the hours worked and costs incurred.
- A6.5 The Parties shall bear their own costs and expenses incurred in compliance with their respective obligations under this Clause A6.

A7 Conflict of interest

- A7.1 The Contractor will not act for any person or body or otherwise in any way which conflicts actually or potentially with the Contractor's obligations in terms of the Contract.
- A7.2 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict or a potential conflict, between the financial or personal interests of the Contractor and the duties owed to the Council under the provisions of this Contract.
- A7.3 The Contractor will notify the Council immediately of any actual or potential conflict of interest and the Parties shall discuss whether the Contractor can continue to fulfil its obligations under the Contract or whether the Contract should be terminated
- A7.4 In the event of the Contractor failing to inform the Council of any actual or potential conflict of interest and the Council becoming aware of such actual or potential conflict of interest the Council shall be entitled:-
(a) to terminate the Contract in accordance with Clause E5; and/or
(b) to take such other steps as it deems necessary.
- A7.5 The actions of the Council pursuant to this Clause A7 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

A8. Best Value

- A8.1 In accordance with the Council's statutory duty to secure Best Value, the Parties will work together to deliver the Contract in such a way as to achieve Best Value.
- A8.2 The Council and the Contractor shall co-operate throughout the Contract Period to achieve Best Value. The results of the co-operation between the Parties shall be to benefit both themselves and continually ensure Best Value in terms of cost and quality in the delivery of this Contract. In co-operating the Parties will consider suggestions from the other. Clause C5 (Change control process) will apply to any changes agreed pursuant to this Clause A8.
- A8.3 Nothing in this Clause A8 shall be construed as either a commitment by (i) the Contractor to incur or (ii) the Council to fund any additional costs for Services other than those which are contained within this Contract.

A9 Mistakes in information

A9.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Contractor in connection with the provision of the Services. The Contractor shall pay the Council any extra costs incurred by the Council as a result of any discrepancies, errors or omissions therein except where such discrepancies, errors or omissions originate from documentation supplied by the Council.

A10. Due diligence

A10.1 Subject to Clause A11 (Inspection of Premises) the Contractor shall be deemed to have:-

- (a) made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- (b) satisfied itself whether by inspection or having raised all relevant due diligence questions with the Council before the Commencement Date of all relevant details relating to :-
 - (i) the Council's requirements;
 - (ii) where appropriate for the Services being provided under the Contract, the suitability of any existing and future operating environment;
 - (iii) the Council's operating processes, procedures and working methods;
 - (iv) any existing contracts referred to in the Due Diligence Information that may be novated to, assigned to or managed by the Contractor under the Contract and/or which the Contractor will require the benefit of for the provision of the Services;
 - (v) where appropriate for the Services being provided under the Contract, the ownership, functionality, capacity, condition and suitability for use in the provision of the Services of the Property
- (c) advised the Council in writing of:-
 - (i) each aspect, if any, of the Council's operating environment that is not suitable for the provision of the Services;
 - (ii) actions needed to remedy each such unsuitable aspect; and
 - (iii) a timetable for those actions and, whether the costs of taking those actions are payable by the Council to the Contractor.

A10.2 Subject to Clause A11 (Inspection of Premises) the Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Council on the grounds that:-

- (a) any information, whether obtained from the Council or otherwise (including information made available by the Council) is incorrect or insufficient;
- (b) where appropriate for the Services being provided under the Contract, aspects of the Council's operating environment are inadequate; or
- (c) it has misinterpreted any of the Council's requirements.

A11 Inspection of Premises

A11.1 Unless the Contract provides otherwise the Contractor is deemed to have inspected any Premises made available by the Council to the Contractor as part of the Contract before submitting its Tender and to have made appropriate enquiries to satisfy itself in relation to all matters connected with the performance of its obligations under this Contract.

A12 Licence to occupy Premises

- A12.1 Any land or Premises made available from time to time to the Contractor by the Council in connection with this Contract shall be made available to the Contractor on a revocable non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under this Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on the expiry or termination of this Contract.
- A12.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under this Contract and the Contractor shall co-operate (and shall use its reasonable endeavours to ensure that its Staff co-operate) with such persons working concurrently on such land or Premises as the Council may reasonably request.
- A12.3 The Contractor shall (and shall use its reasonable endeavours to ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Council, and the Contractor shall pay the cost of making good any damage caused by the Contractor or its Staff to such Premises (fair wear and tear excepted). For the avoidance of doubt damage includes damage to the fabric of the building, plant, fixed equipment or fittings therein.
- A12.4 The Parties agree that there is no intention on the part of the Council to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Council retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

A13 Property

- A13.1 Where the Council provides Property free of charge to the Contractor such Property shall be and remain the property of the Council and the Council and its agents shall have the right to enter the Contractor's premises during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property. The Contractor shall advise any Sub-contractors accordingly.
- A13.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Council otherwise within 5 Working Days of receipt.
- A13.3 The Contractor shall maintain the Property in good order and repair (fair wear and tear excepted) and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- A13.4 The Contractor shall ensure that all Property whilst in its possession, either on the Premises or elsewhere during the Contract Period, is secured in accordance with the Council's reasonable security requirements as advised to the Contractor from time to time.
- A13.5 The Contractor shall be liable for all loss of or damage to, the Property (fair wear and tear excepted) unless such loss or damage was caused by the Council's Default. The Contractor shall inform the Council within 2 Working

Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

A14 Records management

- A14.1 The Contractor shall throughout the Contract Period assist the Council in complying with its obligations in respect of records management when required by the Council (acting reasonably) at no cost to the Council.
- A14.2 The Contractor shall ensure that Records are retained in compliance with:-
(a) the Council's records management policy or any other records management policy agreed between the Parties; and/or
(b) the agreed Retention Schedule throughout the Contract Period for the appropriate Retention Period,
- A14.3 At the expiry or termination of the Contract the Contractor shall, at no cost to the Council, ensure that any Records that are still within their Retention Period are returned to the Council or are destroyed at the Council's discretion.
- A14.4 The Contractor's compliance with the provisions of this Clause A14 shall be monitored in terms of Clause C9 (Monitoring of Contract Performance).

B PRICE AND ORDERING PROCEDURES

B1. Price

- B1.1 In consideration of the Contractor's performance of its obligations under the Contract the Council shall pay the Price to the Contractor in accordance with part 3 of the Schedule.

B2 Set –off

- B2.1 The Council may set off any amount owed by the Council to the Contractor under this Contract against any amount owed by the Contractor to the Council under this or any other contract and/or agreement between the Council and the Contractor.
- B2.2 Prior to exercising its right of set off in terms of Clause B2.1 the Council shall, within 20 Working Days of receipt of the relevant invoice, give notice to the Contractor setting out the Council's reasons for retaining the relevant amount.
- B2.3 The Contractor shall make all payments due to the Council without any deduction whether by way of set off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Contractor.
- B2.4 Any overpayment by either Party, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

B3 Price review

- B3.1 Where the Council has specified in the Procurement Documents that the Price shall remain fixed for a specified period from (and including) the Commencement Date the Price shall remain fixed for that period following

which it will be subject to review at intervals to be agreed between the Parties unless specified otherwise in the Procurement Documents (“the Review Date”) provided the requirements of Clause C4 (Modification of the Contract) are met.

B3.2 The Parties shall at least 3 Months prior to the Review Date follow the process set out in Clause C5 (Change Control Process) to determine whether any modification to the Price in terms of Clause C4 (Modification of the Contract) is justified.

B4 Price adjustment on extension of Contract Period

B4.1 In the event that the Council exercises its discretion to extend the Contract Period pursuant to Clause A1.2 the Parties will follow the process set out in Clause C5 (Change control process) to determine whether any modification to the Price in terms of Clause C4 (Modification of the Contract) is justified.

B4.2 For the avoidance of doubt both Parties accept and acknowledge that any modification to the Price shall not have the effect of altering the economic balance of the Contract during the Extended Period in favour of the Contractor in a manner not provided for in the terms of the Contract.

B4.3 If a modification to the Price is agreed between the Council and the Contractor the revised Price will apply during the Extended Period.

B5. Ordering procedures

B5.1 The Council may during the Contract Period order Services from the Contractor by and in accordance with any specific requirements contained in a Purchase Order.

B5.2 Each Purchase Order is subject to and shall be deemed to incorporate the terms and conditions of this Contract to the exclusion of any terms and conditions which the Contractor may seek to impose under any quotation, confirmation of order, advice note, delivery note, invoice or similar document. By entering into this Contract the Contractor agrees to the application of the terms and conditions of this Contract. The Contractor and the Council agree that any other terms or conditions (whether or not inconsistent with the terms and conditions of this Contract) contained or referred to in any correspondence or any documentation submitted by the Contractor or elsewhere implied by custom, practice or course of dealing shall not apply.

B5.3 The Contractor shall accept all Purchase Orders provided they comply with the terms of this Contract. Unless otherwise stated, or where the Council’s electronic procurement system is unavailable, Purchase Orders will in all cases be placed electronically using the Council’s electronic procurement system (iProcurement). Purchase Orders placed using any other means should not be accepted. The placing of a Purchase Order by the Council on the Contractor shall create a contract in respect of the relevant Services specified in the Purchase Order.

B5.4 For the avoidance of doubt, each Purchase Order shall survive the expiration of this Contract.

B6. Cancellation or variation of a Purchase Order

B6.1 Notwithstanding the provisions of Clause C5 (Change control process):-

- (a) any Purchase Order accepted by the Contractor may only be cancelled or varied by the Contractor at the sole discretion of the Council and on the condition that the Contractor shall indemnify the Council in full against all losses, costs, damages, charges and expenses directly and properly incurred by the Council as a result of such cancellation or variation; and
- (b) the Council may vary or cancel any Purchase Order in whole or in part by giving notice to the Contractor whereupon the Contractor shall discontinue all work in relation to that Purchase Order. The Council may cancel or vary any such Purchase Order:
 - (i) on the date of the Purchase Order without charge;
 - (ii) at any time following the date of the Purchase Order, subject to payment to the Contractor of such proportion of the Price as may be fair and reasonable having regard to the value of the work done by the Contractor in relation to that Purchase Order. For the avoidance of doubt, this shall not include any payment for anticipated profits or consequential loss. Any costs incurred by the Contractor must be substantiated and accompanied by evidence to this effect.

B7 Unauthorised provision

B7.1 The Contractor must not provide any Services to or for any department, officer or agent of the Council without first receiving a Purchase Order for such Services issued by an authorised officer of the Council.

B7.2 The Council will not be liable for the cost of any Services provided as the case may be by the Contractor unless such Services are detailed in the Contract/Purchase Order.

C. CONTROL OF THE CONTRACT

C1. Assignment

C1.1 The Contractor shall not be entitled to assign, novate or otherwise dispose of or create any trust ("Assign") in relation to any or all of their rights, obligations or liabilities under the Contract or any part thereof except with the Approval of the Council subject to:-

- (a) the Contractor's compliance with the requirements of this Clause;
- (b) the Council's compliance with its procedural requirements permitting assignment;
- (c) the Contractor satisfying the Council that the Assignee is not in one of the situations referred to in Regulation 58 of the Public Contracts (Scotland) Regulations 2015 and/or the Procurement (Scotland) Regulations 2016 which would have resulted in exclusion in a procurement exercise; and
- (d) where appropriate, the Council considering and relying on information received from Police Scotland under the Protocol.

C1.2 Where the Contractor proposes to Assign their rights and obligations under the Contract they shall give the Council not less than 6 weeks prior written notice of their intention.

C1.3 To allow the Council to consider the Contractor's request the Contractor shall provide the Council with such information as it may reasonably request including but not limited to :-

- (a) the name and address of the proposed Assignee together with its relevant company/organisation details (such as its registered office and company registration number);
 - (b) the proposed date of transfer and details of the nature of the legal relationship between the Contractor and proposed Assignee;
 - (c) evidence that the proposed Assignee can meet the Council's requirements;
 - (d) appropriate financial information relative to the proposed Assignee to allow the Council to be satisfied as to their financial viability; and
 - (e) information about any Premises the Assignee intends to use for the provision of the Services.
- C1.4 Until the completion of the Assignment or until the Contract with the Contractor is terminated:-
- (a) the proposed Assignee must not provide the Services or any part thereof and no payments will be made by the Council to the proposed Assignee; and
 - (b) the Contractor shall continue to be responsible for the performance of and shall be liable to the Council for the acts and omissions of any party to which it may Assign its obligations under the Contract as if they were the acts or omissions of the Contractor.
- C1.5 In the event that Approval is not granted to the Assignment or the Assignment does not proceed and the Contractor confirms in writing to the Council that they are unable to continue to provide the Services to the reasonable satisfaction of the Council, either Party may terminate the Contract with immediate effect by issuing a Termination Notice.
- C1.6 The Council shall be entitled to Assign its rights and obligations under the Contract without requiring the consent of the Contractor.
- C1.7 The provisions of this Clause C1 shall only apply in a business restructuring situation where the Contractor proposes to restructure their business in such a way that the restructuring affects the business' status or legal ownership. In these circumstances the Contractor shall give the Council not less than 6 weeks prior written notice of their intention to do so. For the purposes of this Clause C1 the Council will treat the proposed restructured business as a proposed Assignee, and Clauses C1.3 to C1.5 will apply.
- C1.8 Notwithstanding the provisions of Clause C1.1 the Contractor may assign the right to receive payment of the Price or any part thereof due to the Contractor under this Contract. Any assignment under this Clause C1.8 shall be subject to:-
- (a) reduction of any sums in respect of which the Council exercises its right of recovery under Clause B2(Set off);
 - (b) all related rights of the Council under the Contract in relation to the recovery of sums due but unpaid; and
 - (c) the Council receiving notification under Clauses C1.9 and C1.10; and
 - (d) where appropriate, the Council considering and relying on information received from Police Scotland under the Protocol.
- C1.9 In the event that the Contractor assigns the right to receive the Price under Clause C1.8 the Contractor or the Assignee shall notify the Council in writing of the assignment and the date upon which the assignment becomes effective.

- C1.10 The Contractor shall ensure that the Assignee notifies the Council of the Assignee's contact information and bank account details.
- C1.11 The payment provisions set out in part 3 of the Schedule shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Council.
- C1.12 The Contractor and the Assignee shall comply with the requirements of TUPE and all relevant Law in relation to any Assignment in terms of this Clause C1.
- C2. Sub-contracting**
- C2.1 The Contractor shall not be entitled to sub-contract their rights and obligations under the Contract or any part thereof except with the Approval of the Council subject to:-
- (a) the Contractor's compliance with the requirements of this Clause C2;
 - (b) the Council's compliance with its procedural requirements permitting sub-contracting;
 - (c) the Contractor satisfying the Council that the proposed Sub-contractor is not in one of the situations referred to in Regulation 58 of the Public Contracts (Scotland) Regulations 2015 and/or the Procurement (Scotland) Regulations 2016 which would have resulted in exclusion in a procurement exercise; and
 - (d) where appropriate, the Council considering and relying on information received from Police Scotland under the Protocol.
- C2.2 Where the Contractor proposes to sub-contract their rights and obligations under the Contract they shall give the Council not less than 6 weeks prior written notice of their intention.
- C2.3 To allow the Council to consider the Contractor's request to sub-contract the Contract the Contractor shall provide the Council with such information as it may reasonably request including but not limited to :-
- (a) The name and address of the proposed Sub - contractor together with its relevant company/organisation details (such as its registered office and company registration number);
 - (b) Appropriate financial information relative to the proposed Sub - contractor to allow the Council to be satisfied as to the financial viability of the proposed Sub-contractor;
 - (c) the part(s) of the Contract the Contractor proposes to subcontract;
 - (d) the terms of the proposed Sub -contract;
 - (e) where appropriate, the monitoring measures to be put in place by the Contractor to ensure that the Sub - contractor complies with the terms of the Contract as if it was the Contractor.
- C2.4 Where the Council grants Approval to the appointment of a Sub-contractor, the Contractor will:-
- (a) be responsible for the performance of and shall be liable to the Council for the acts and omissions of its Sub-contractors;
 - (b) ensure that any Sub-contractor appointed complies with the requirements of the Contract;
 - (c) ensure that a provision is included in any Sub -contract requiring the Sub-contractor to apply for the Approval of the Council to further sub-contract the performance of the Contract; and

- (d) provide the Council with a copy of the Sub-contract if requested to do so.

C2.5 Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

C2.6 The Contractor and the Sub-contractor shall comply with the requirements of TUPE and all relevant Law in relation to any sub-contracting in terms of this Clause C2.

C3. Waiver

C3.1 The failure of either Party to insist upon strict performance of any provision of the Contract, 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 result in a lessening of the obligations established by the Contract and will in no way affect that Party's right later to insist upon such performance or exercise any such right or remedy.

C3.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause A4 (Notices).

C3.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

C4. Modification of the Contract

C4.1 This Contract can only be modified in the following circumstances:-

- (a) where the Procurement Documents provided for modification to be made to the Contract terms irrespective of their monetary value provided that:-
 - (i) the scope and nature of possible modifications or options as well as the conditions under which they may be used have been stated in the Procurement Documents; and
 - (ii) there is no provision for modifications or options that would alter the overall nature of the Contract;
- (b) where the Council requires additional services that have become necessary where a change of contractor:-
 - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations; and
 - (ii) would cause significant inconvenience or substantial duplication of costs for the Councilprovided that any increase in the Price does not exceed 50% of the initial Price;
- (c) where all of the following conditions are fulfilled:-
 - (i) the need for modification has been brought about by circumstances which the Council, acting diligently, could not have foreseen;
 - (ii) the modification does not alter the overall nature of the Contract; and
 - (iii) any increase in the Price does not exceed 50% of the initial Price
- (d) where a Replacement Contractor replaces the original Contractor as a consequence of:-

- (i) an unequivocal review clause or option which conforms to the requirements of Clause C4.1 (a); or
 - (ii) complete or partial succession into the position of the original Contractor following corporate restructuring including takeover, merger, acquisition or insolvency in terms of Clause C1.7 provided this does not entail other substantial modifications to the Contract;
 - (e) where the modifications irrespective of their value are not substantial in terms of Clause C4.2; or
 - (f) where the value of the modification is below both of the following values:-
 - (i) the relevant threshold as defined in Regulation 5 of the Public Contracts (Scotland) Regulations 2015 in force at the time of the modification; and
 - (ii) 10% of the initial value of the Contract
- C4.2 A modification of a contract during the Contract Period will be considered to be substantial for the purposes of Clause C4.1 (e) where:-
- (a) the modification renders the modified contract materially different in character from the original contract;
 - (b) the modification introduces conditions which had they been part of the initial procurement procedure would have:-
 - (i) allowed for the admission of candidates other than those initially selected;
 - (ii) allowed for the acceptance of a tender other than that originally accepted; or
 - (iii) attracted additional participants in the procurement procedure;
 - (c) the modification changes the economic balance of the modified contract in favour of the contractor in a manner which was not provided for in the initial contract;
 - (d) the modification extends the scope of the contract considerably; or
 - (e) a new contractor replaces the existing contractor in cases other than those provided for in Clause C4.1(d)
- C4.3 Where successive modifications are made:-
- (a) the limitations imposed by Clauses C4.1 (b) and C4.1 (c) (iii) shall apply to the value of each modification; and
 - (b) they shall not be aimed at circumventing the provisions of the Public Contracts (Scotland) Regulations 2015
 - (c) for the purposes of Clause C4.1(f) the value must be the net cumulative value of the successive modifications
- C4.4 For the purposes of calculating the Price referred to in Clauses C4.1 (b) and (c) and the value referred to in Clause C4.1 (f) (ii) the updated figure shall be the reference figure in the event of the Contract containing an indexation clause.
- C4.5 The Parties will follow the change control process set out in Clause C5 (Change control process) when considering any modification in terms of this Clause C4.
- C4.6 The Parties will be prohibited from considering any modification which does not fall within the scope of this Clause C4 and the Council will be obliged to undertake a new procurement process for any such modifications.

C5 Change control process

- C5.1 In the event of either Party (“the Requesting Party”) considering that a modification of the Contract is required they shall serve a Change Control Notice on the other Party (“the Receiving Party”). Only modifications falling within the scope of Clause C4 (Modification of the Contract) can be considered.
- C5.2 The Change Control Notice will:-
- (a) set out the scope and nature of the proposed modification required by the Requesting Party in sufficient detail to allow the Receiving Party to consider whether any resultant change to the Price is required to implement the modification ;and
 - (b) require the Receiving Party, if appropriate, to provide the Requesting Party with details of any proposed change to the Price.
- C5.3 The Parties shall enter into good faith negotiations to agree the modification. Any resultant change in the Price shall, in all the circumstances, properly and fairly reflect the nature and extent of the proposed modification and shall in no circumstances exceed the limits set out in Clause C4 (Modification of the Contract). The Parties shall negotiate for:-
- (a) not more than 30 Working Days from the date of service of the Change Control Notice by the Requesting Party; or
 - (b) such shorter period as the Requesting Party specified in the Change Control Notice where, in the reasonable opinion of the Requesting Party, the modification is necessary as a matter of urgency.
- C5.4 The Receiving Party shall within the negotiation period set out in clause C5.3 provide the Requesting Party with:-
- (a) a statement of opinion on the impact of the proposed modification on the performance of the Receiving Party’s obligations under the Contract;
 - (b) a description of any amendment required to the Contract to accommodate the proposed modification;
 - (c) an overview of the net costs of, or savings from, implementing the proposed modification as the case may be;
 - (d) any other information reasonably requested by the Requesting Party or appearing to the Receiving Party to be relevant; and
 - (e) if requested by the Requesting Party, an updated financial model, reflecting changes to all relevant costs from the scheduled date of implementation of the modification
- C5.5 As soon as practicable after the Receiving Party provides the Requesting Party with the information required in terms of Clause C5.4, the Parties shall meet to discuss any issues arising from the Change Control Notice or from the information provided by the Receiving Party. For the avoidance of doubt, any discussions held between the Parties pursuant to this Clause C5.5 shall be without prejudice.
- C5.6 In the event of the Parties failing to agree the modification the Requesting Party may by written notice to the Receiving Party:-
- (a) agree that the Parties shall continue to perform their obligations under the Contract without the modification; or
 - (b) propose an amendment to the modification and the provisions of Clauses C5.1 – C5.5 shall apply; or

- (c) accept an amendment to the modification proposed by the Receiving Party; or
 - (d) terminate the Contract by issuing a Termination Notice except where the Receiving Party has already provided all or part of the Services or where the Receiving Party can show evidence of substantial work being carried out to fulfil the requirements of the Contract. In such cases the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the dispute resolution procedure detailed at Clause G1 (Dispute resolution).
- C5.7 If the Requesting Party has not confirmed that it wishes to proceed with the Change Control Notice within 30 calendar days of the date of the meeting referred to in Clause C5.5 above or has not withdrawn the Change Control Notice within 30 calendar days of the date of such meeting then the Change Control Notice (or the relevant part) shall be deemed to have been withdrawn.
- C5.8 No amendment to or modification of the Contract shall have any effect unless it is in writing and signed by each of the Parties hereto.
- C5.9 Each Party shall bear their own costs in implementing the procedures set out in this Clause C5.
- C5.10 Notwithstanding the service of a Change Control Notice in accordance with the change control process as detailed in this Clause C5 both Parties shall continue to fulfil their obligations under the Contract until such time as the Requesting Party confirms to the Receiving Party that it wishes to proceed with the Change Control Notice.
- C6 Change in Law**
- C6.1 The Contractor shall not be relieved of its obligation to provide the Services in accordance with the provisions of the Contract nor be entitled to an increase in the Price as a result of:-
- (a) a General Change in Law; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.
- C6.2 The Parties acknowledge that during the Contract Period the local government structure in the Council's administrative area may be subject to change. These administrative changes may give rise to the need for the Council to terminate this Contract and/or seek its potential variation with any successor or assignee of the Council. The Council shall not be liable for any loss of any kind including, but not limited to, lost opportunity that may arise as a consequence of local government reorganisation.
- C6.3 If a Specific Change in Law occurs or will occur during the Contract Period the Contractor will:-
- (a) notify the Council as soon as reasonably practicable of the likely effects of that change including:-
 - (i) whether any change is required to the Services, the Price or the Contract;
 - (ii) whether any relief from compliance with the Contractor's obligations is required including any obligation to achieve a Service Level; and

- (b) provide the Council with evidence:-
 - (i) that the Contractor has minimised any increase in costs or maximised any reduction in costs;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided has been taken into account in amending the Price

C6.4 Any variation in the Price or relief from the Contractor's obligations resulting from a Specific Change in Law (other than as referred to in Clause C6.1 (b)) shall be implemented in accordance with the change control process set out in Clause C5 (Change control process).

C7. Severability

C7.1 If any provision of the Contract is held to be 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.

C7.2 In the event that any provision severed in terms of Clause C7.1 is so fundamental as to prevent the performance of the Contract or materially alters the balance of risks and rewards in this Contract either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to modify the Contract so that, as modified, it is valid and enforceable, preserves the balance of risks and rewards and, to the extent that it is possible, achieves the Parties' original commercial intentions.

C7.3 If the Parties are unable to agree the modifications within the period set out in the notice given under Clause C7.2 the matter shall be referred to dispute resolution as set out in Clause G1 (Dispute Resolution). If the Parties remain unable to resolve the matter following completion of the dispute resolution process either Party shall have the right to terminate the Contract by issuing a Termination Notice. Each Party will be responsible for their own costs in relation to any such termination.

C8 Implementation Plan

C8.1 Where the Procurement Documents specified the requirement for an Implementation Plan or the Parties have agreed that an Implementation Plan shall be provided, the Contractor shall, prior to the commencement of the provision of the Services, provide a draft Implementation Plan which must contain information at the level of detail necessary to manage the implementation stage effectively and as the Council may require. The draft Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to the Contractor.

C8.2 The Contractor shall submit the draft Implementation Plan to the Council for Approval within such period as specified by the Council unless the draft Implementation Plan has already been submitted as part of the Tender.

C8.3 The Contractor shall monitor its performance against the Implementation Plan and any other requirements of the Council as set out in the Contract and report to the Council on such performance as part of the contract monitoring arrangements contained in Clause C9 (Monitoring of Contract performance).

- C8.4 The Contractor shall keep the Implementation Plan under review in accordance with the process and timescales for review agreed between the Parties and shall ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the provision of the Services. The Council shall have the right to require the Contractor, at the Contractor's expense, to include any reasonable changes or provisions in each version of the Implementation Plan.
- C8.5 If the Contractor becomes aware that there is, or there is reasonably likely to be a delay under the Contract it shall:-
- (a) notify the Council as soon as practically possible and no later than within two (2) Working Days of becoming aware of the delay or anticipated delay; and
 - (b) include in its notification an explanation of the actual or anticipated impact of the delay; and
 - (c) comply with the Council's instructions in order to address the impact of the delay or anticipated delay; and
 - (d) use all reasonable endeavours to eliminate or mitigate the consequences of any delay or anticipated delay;

C9. Monitoring of Contract performance

- C9.1 The Contractor shall comply with any monitoring arrangements contained in Part 4 of the Schedule. The Contractor shall also comply with the Council's performance review and appraisal process contained in the Procurement Documents and/or the Schedule including, but not limited to, providing such data and information as the Contractor may be required to produce.
- C9.2 The Contractor's performance in relation to the delivery of the Implementation Plan, achievement of the Service Levels, delivery of community benefits, delivery of fair working practices and progress made towards adoption fair work first criteria (as appropriate) shall form part of the performance review and appraisal process referred to in Clause C9.1
- C9.3 Where required in terms of the Procurement Documents and/or the Schedule the Contractor shall:-
- (a) attend progress meetings with the Council at the frequency and times specified by the Council and shall ensure that its representatives are suitably qualified to attend such meetings; and
 - (b) submit progress reports to the Council at the times and in the format specified by the Council.

C10 Exit management

- C10.1 Where the Procurement Documents specified the requirement for an Exit Plan the Contractor shall deliver the Exit Plan to the Council within 20 Working Days of the Commencement Date.
- C10.2 Unless otherwise specified by the Council the Exit Plan shall set out as a minimum:-
- (a) details of the Services being provided by the Contractor;
 - (b) the Contractor's proposed methodology for achieving an orderly transition of the Services from the Contractor to the Council and/or its Replacement Contractor on the expiry or termination of the Contract;

- (c) details of contracts (if any) which will be available for transfer to the Council and/or the Replacement Contractor upon the Expiry Date together with any reasonable costs required to effect such transfer ;
 - (d) proposals for providing the Council or a Replacement Contractor with copies of all documentation:
 - (i) used in the provision of the Services and necessarily required for the continued use thereof; and
 - (ii) relating to the use and operation of the Services;
 - (e) such other material and information as the Council shall reasonably require.
- C10.3 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then the matter shall be referred for resolution by the dispute resolution procedure set out in Clause G1 (Dispute resolution).
- C10.4 During each Contract Year the Contractor shall review the Exit Plan and ensure that it is maintained and updated as may be necessary to reflect the then current provision of the Services. The Council shall have the right to require the Contractor, at the Contractor's expense, to include any reasonable changes or provisions in each version of the Exit Plan. Any reviews of the Exit Plan under this Clause C4 shall be carried out in accordance with the provisions of Clause C5 (Change control process)

D LIABILITIES

D1 Liability and indemnity

Categories of Liability

- D1.1 Subject to the limits set out in Clauses D1.5 and D1.6 the Contractor shall be liable for the following types of loss, damage, cost or expense flowing from an act or Default of the Contractor which shall be regarded as direct and shall (without in any way limiting other categories of loss, damage, cost or expense which may be recoverable by the Council) be recoverable by the Council:-
- (a) personal injury to, disease or death of any person except to the extent that such personal injury , disease or death was caused by or contributed to by any negligence of the Council;
 - (b) loss or damage to property (heritable or moveable) whether belonging to the Council or to any other person except to the extent that such loss or damage was caused by or contributed to by any negligence of the Council;
 - (c) any breach of the Data Protection Legislation;
 - (d) loss, destruction, corruption, degradation, inaccuracy or damage to the Council's Data;
 - (e) infringement of any Intellectual Property Rights involved in the Contract;
 - (f) the additional operational and/or administrative costs and expenses arising from any Material Breach;
 - (g) the cost of procuring, implementing and operating any alternative or replacement service to the Services; and
 - (h) any regulatory losses, fines, expenses or other losses arising from a breach by the Contractor of any Laws.

Exclusions from liability

- D1.2 Neither Party excludes or limits its liability for
- (a) death or personal injury; or
 - (b) Fraud or fraudulent misrepresentation by it or its staff; or

- (c) any breach of the Data Protection Legislation by the Contractor; or
- (d) any breach by the Council of the Data Protection Legislation which is caused in whole or in part by any breach of the Data Protection Legislation by the Contractor

D1.3 In no event shall the Contractor be liable to the Council for any:-
(a) loss of or damage to goodwill;
(b) loss of savings (whether anticipated or otherwise); and/or
(c) any indirect, special or consequential loss or damage.

D1.4 In no event shall the Council be liable to the Contractor for any:-
(a) loss of profits;
(b) loss of business;
(c) loss of revenue;
(d) loss of or damage to goodwill;
(e) loss of savings (whether anticipated or otherwise); and/or
(f) any indirect, special or consequential loss or damage

Limitations on liability

D1.5 The total aggregate liability of the Council to the Contractor in each Contract Year shall in relation to Defaults resulting in direct loss or damage to the Contractor's property be limited to a sum equal to the Price paid and payable in the Contract Year in which the Default occurred.

D1.6 The liability of the Contractor to the Council shall:-
(a) in relation to Defaults resulting in direct loss or damage to the Council's heritable property be unlimited;
(b) in relation to Defaults resulting in direct loss or damage to the Council's property (other than heritable property) be limited to Five Million (£5,000,000) Pounds Sterling for any event or series of connected events;
(c) in relation to loss, destruction, corruption, degradation, inaccuracy or damage to the Council's Data or any other data or any copy of such Council Data or other data be limited to Five Million (£5,000,000) Pounds Sterling for any event or series of connected events;
(d) in respect of all other claims, losses or damages be limited to a sum equivalent to one hundred and twenty five per cent (125%) of the Price paid and payable in the Contract Year in which the Default occurred.

D1.7 The Parties agree that the total aggregate liability referred to in Clauses D1.5 - D1.6 shall apply:-
(a) whether the liabilities are expressed as an indemnity or otherwise; and
(b) whether they arise in contract, delict, breach of statutory duty or otherwise

D1.8 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract.

D2. Insurance

D2.1 The Contractor shall maintain in force with a reputable insurance company the policies of insurance for the indemnity limits and types of insurance specified by the Council in the Procurement Documents.

D2.2 The Contractor shall (if requested to do so) exhibit to the Council no later than 14 calendar days after the Commencement Date current certificates of

insurance in respect of all insurance policies referred to in this Clause D2 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- D2.3 The Contractor shall (if requested to do so) exhibit to the Council any replacement policies of insurance entered into during the Contract Period prior to or at their commencement and shall (if requested to do so) exhibit to the Council any renewal receipts on demand during the Contract Period.
- D2.4 The provisions of any insurance or the amount of cover shall not relieve the Contractor or any approved Sub-contractors of any liabilities under the Contract.
- D2.5 In the event of any claim or potential claim being received by the Contractor from the Council or any other person in relation to the Contract they will:-
- (a) within 14 calendar days of such claim or potential claim first having been intimated to them provide details of the name and address of their insurance company together with the relevant policy number to the Council or such other person making a claim or potential claim;
 - (b) provide timeously to their insurance company all relevant details to enable such claim or potential claim to be processed with the minimum delay and
 - (c) update the Council on the progress and outcome of any claim submitted by such other person.
- D2.6 If, for whatever reason, the Contractor fails to put in place or maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of making such alternative arrangements from the Contractor.

D3. Warranties and representations

- D3.1 The Contractor warrants and represents that:-
- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company), licences and permissions (statutory, regulatory, contractual or otherwise) to enter into and perform its obligations under the Contract;
 - (b) that the Contract is executed by a duly authorised representative of the Contractor;
 - (c) in entering into the Contract it has not committed any Fraud;
 - (d) it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010
 - (e) as at the Commencement Date, all information, statements and representations contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to the execution of the Contract and it will advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
 - (f) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;

- (g) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- (h) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (i) in the 3 years prior to the Commencement Date:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.
- (j) it and its Subcontractors (if any) have all the necessary Staff, equipment and experience necessary to properly perform its obligations under the Contract
- (k) it will at all times:-
 - (i) perform its obligations under the Contract with all reasonable care, skill and diligence and in accordance with Good Industry Practice
 - (ii) perform its obligations under the Contract within the timeframe agreed with the Council.

- D3.2 The Contractor shall promptly notify the Council in writing:-
- (a) of any material detrimental changes to the organisation that impacts on its ongoing financial viability and/or its financial standing and/or credit rating;
 - (b) if it undergoes a Change of Control; and
 - (c) of any circumstances suggesting that a Change of Control is planned or in contemplation provided this does not contravene any Law.

- D3.3 The Contractor acknowledges and agrees that:-
- (a) The warranties, representations and undertakings contained in the Contract are material and are designed to induce the Council into entering into the Contract; and
 - (b) The Council has been induced into entering into the Contract and in doing so has relied upon the warranties, representations and undertakings contained in the Contract.

- D3.4 For the avoidance of doubt the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Council may have in respect of a breach of that provision by the Contractor.

D4. Guarantee

- D4.1 If the requirement for a Guarantee to be provided has been included in the Procurement Documents the Contractor shall ensure that the Guarantor shall within 20 Working Days of the Commencement Date execute and deliver a Guarantee in terms satisfactory to the Council.

- D4.2 The requirement to provide a Guarantee set out in Clause D4.1 is inserted solely for the Council's benefit. The Council may waive this requirement, in whole or in part and with or without conditions, without prejudicing the Council's rights.
- D4.3 For the avoidance of doubt if Clause D4.1 has not been satisfied the Council reserve the right to terminate the Contract with immediate effect by issuing a Termination Notice to the Contractor.

E TERMINATION

E1 Termination on the occurrence of a Termination Event

- E1.1 The Council shall terminate the Contract by issuing a Termination Notice to the Contractor where the Contractor has committed a Termination Event.
- E1.2 Clause E1.1 shall apply where any person who is a member of the administrative, management or supervisory body of the Contractor or has powers of representation, decision or control in relation to the Contractor commits a Termination Event.
- E1.3 The Termination Notice issued in terms of Clause E1.1 shall specify the particular Termination Event the Council is relying on to terminate the Contract together with details of the consequences of termination as set out in Clause E12 (Consequences of expiry/termination).

E2 Termination on Material Breach

- E2.1 Notwithstanding the provisions of Clause E1.1 either Party may terminate the Contract by issuing a Termination Notice to the other Party where the other Party commits a Material Breach.
- E2.2 For the purposes of Clause E2.1 the Council shall be entitled to regard the Contractor as having committed a Material Breach where the Contractor is in one of the following situations:-
- (a) has committed a breach that is serious in the widest sense of having a serious effect on the benefit which the Council would otherwise derive from :-
 - (i) a substantial portion of the Contract; or
 - (ii) any of the obligations set out in sections C, D, H or X of the Contract ; or
 - (iii) any of the obligations set out in any part of the Schedule
 - (b) becomes bankrupt or is the subject of insolvency or winding up proceedings or its assets are to be administered by a liquidator/the court or where it enters into an arrangement with its creditors or where its business activities are to be suspended or it is in any analogous situation arising from a similar procedure under any other laws or regulations the Contractor may be subject to;
 - (c) is guilty of grave professional misconduct which renders its integrity questionable;
 - (d) enters into agreements with other parties aimed at distorting competition;
 - (e) has been guilty of serious misrepresentation in supplying the information required during the procurement process for the verification of the absence of grounds for exclusion or fulfilment of the selection criteria;

- (f) has withheld information referred to in (e) or is not able to submit the supporting documents required under Regulation 60 of the Public Contracts (Scotland) Regulations 2015;
- (g) has, at the time of the award of this Contract, been in one of the situations referred to in Regulation 58 of the Public Contracts (Scotland) Regulations 2015 and/or the Procurement (Scotland) Regulations 2016, and should have been excluded from the procurement procedure;
- (h) seeks or has sought to unduly influence the Council's decision making process;
- (i) should not have been awarded the Contract in view of a serious infringement of the obligations under the Treaty and Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU;
- (j) notifies the Council of its inability to provide the Services in terms of Clause X1.3.

E2.3 For the avoidance of doubt the Parties agree that the situations set out in this Clause E2.2 are not exhaustive and shall not restrict the Council's right to terminate the Contract for Material Breach by serving a Termination Notice on the Contractor.

E3 Termination on Default

E3.1 Without prejudice to any other rights or remedies that the Council has under the Contract where the Council considers that the Contractor has committed a Default in relation to the Contract or any part thereof, the Council shall be entitled to serve a Formal Warning Notice on the Contractor:-

- (a) specifying that it is a Formal Warning Notice;
- (b) giving details of the Default and requiring it to be remedied;
- (c) setting a timescale for the Default to be remedied; and
- (d) stating that if the Default recurs two or more times within a 3 Month period after the date of service of the Formal Warning Notice, the Council will be entitled to consider it to be a Persistent Breach and issue a Termination Notice to the Contractor terminating the Contract with immediate effect.

E3.2 If:-

- (a) within the timescale specified in the Formal Warning Notice, the Contractor has failed to demonstrate to the Council's satisfaction that the Default specified has been remedied and that the Contractor has put in place measures to ensure that such Default does not recur; or
- (b) within a 3 Month period after the date of service of the Formal Warning Notice, the Contractor has failed to demonstrate to the satisfaction of the Council that the Default specified has not recurred two or more times within such 3 Month period and that the Contractor has put in place measures to ensure that such Default does not recur then the Council may deem such failure to be a Persistent Breach for the purposes of Clause E3.1 (d).

E4 Termination on failure to pay

E4.1 If the Council fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within 28 calendar days of the date of such written notice, the Contractor may terminate the Contract by issuing a Termination Notice to the Council, save that such right of

termination shall not apply where the failure to pay is due to the Council exercising its rights under Clause B2 (Set off).

E5. Termination on Change of Control

E5.1 The Council may terminate the Contract by issuing a Termination Notice within six months of:-

- (a) being notified that a Change of Control has occurred; or
- (b) 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 Approval was granted prior to the Change of Control.

E6 Termination on conflict of interest

E6.1 In the event of the Council receiving notification from the Contractor disclosing a conflict of interest in terms of Clause A7 (Conflict of Interest) and/or the Council becoming aware of an actual or potential conflict of interest between the pecuniary or personal interests of the Contractor and the Contractor's obligations under the Contract the Council shall be entitled to:-

- (a) terminate the Contract immediately upon issuing a Termination Notice to the Contractor; or
- (b) take such other steps as the Council may deem necessary without terminating the Contract.

E6.2 The actions of the Contractor pursuant to this Clause E6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

E7 Termination due to financial standing

E7.1 The Council may terminate the Contract by issuing a Termination Notice with immediate effect:-

- (a) 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 Contractor which:-
 - (i) adversely impacts on the Contractor's ability to perform its obligations under the Contract; or
 - (ii) could reasonably be expected to have an adverse impact on the Contractor's ability to perform its obligations under the Contract;or
- (b) if the Contractor demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially weaker financial standing or credit rating than the Contractor.

E8. Termination due to cancellation of registration

E8.1 Where the Procurement Documents specified a requirement for Staff involved in the provision of the Services or the Contractor to be registered with a particular Regulatory Body the Council shall be entitled to terminate this Contract with immediate effect by issuing a Termination Notice if:-

- (a) the Regulatory Body serves notice of their intention to cancel the Staff's/Contractor's registration irrespective of whether time for any objections to be lodged has expired or that objections have been made and a hearing is pending ;or

- (b) an improvement notice is issued to the Staff/Contractor by the Regulatory Body and the period specified in the improvement notice has expired without the improvement having been made; or
- (c) a sheriff issues an order to the Staff/Contractor cancelling its registration; or
- (d) the Staff/Contractor has failed to comply with any conditions attached to its registration.

E9. Termination due to failure to have or maintain a licence

E9.1 Where the Procurement Documents specified a requirement for the Contractor and/or for Staff to have or maintain a licence the Council shall be entitled to terminate this Contract by issuing a Termination Notice with immediate effect if:-

- (a) the Contractor/Staff has failed to put in place a licence required under the Contract; or
- (b) the Contractor/Staff has failed to maintain a licence required under the Contract throughout the Contract Period; or
- (c) the Contractor has failed to provide sight of any licence required under the Contract after being requested to do so;
- (d) the Contractor has failed to provide details of any conditions imposed on any licence required under the Contract; or
- (e) conditions have been imposed on any licence required under the Contract which prevents the Contractor/Staff from providing the Services.

E10 Partial termination, suspension and partial suspension

E10.1 Where the Council has the right to terminate this Contract the Council shall be entitled to terminate or suspend the whole or any part of this Contract provided always that, if the Council elects to terminate or suspend the Contract in part, the parts of this Contract not terminated or suspended can, in the Council's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of the Contract.

E10.2 Any suspension of this Contract under Clause E10.1 shall be for such period as the Council may specify in writing and without prejudice to any right of termination which has already accrued or subsequently accrues to the Council.

E10.3 The Parties shall seek to agree the effect of any modification necessitated by a partial termination, suspension or partial suspension in accordance with the procedure set out in Clause C5 (Change control process) including the effect that the partial termination, suspension or partial suspension may have on the provision of the Services and the Price provided that the Contractor shall not be entitled to:-

- (a) an increase in the Price in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of the Council's termination rights under Clause E ;and
- (b) reject the modification.

E11 Termination without cause

E11.1 The Council shall have the right to terminate the Contract at any time during the Contract Period even though the Contractor has not committed a Default by giving at least 3 Month's written notice to the Contractor. The Council may extend the period of notice at any time before it expires, subject to agreement

between the Parties on the level of performance to be provided by the Contractor during the period of extension.

- E11.2 Where the Council terminates the Contract under Clause E11.1 the Council shall indemnify the Contractor against any commitment, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit to the Council a fully itemised and costed list detailing any losses reasonably and properly incurred by the Contractor as a result of termination under Clause E11.1 together with any relevant supporting evidence. Any payment paid by the Council in accordance with this Clause E11.2 shall be in full and final settlement of any claim, demand and/or proceedings of the Contractor in relation to any termination by the Council pursuant to Clause E11.1. The Contractor shall be excluded from all other rights and remedies it would otherwise have had in respect of any such termination.
- E11.3 The Council shall not be liable under Clause E11.2 above to pay any sum which:-
- (a) was claimable under insurance held by the Contractor and the Contractor has failed to make a claim in accordance with the procedural requirements of the insurance policy;
 - (b) when added to any sums paid or due to the Contractor under the Contract exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period;
 - (c) is a claim by the Contractor for loss of profit, loss of or damage to goodwill due to early termination of the Contract; and
 - (d) is indirect or consequential loss or damage .

E12 Termination due to information received from Police Scotland under the Protocol

- E12.1 Where the Procurement Documents specified that the Council will use the Protocol the Council may terminate the Contract with immediate effect by issuing a Termination Notice to the Contractor if the Council concludes that the Contractor or one of their officials is no longer suitable to provide the Services on the basis of information received by the Council under the Protocol, provided the Council has, before reaching its decision:-
- (a) given the Contractor a maximum period of 5 Working Days to comment on the information received under the Protocol; and
 - (b) fully considered the information received under the Protocol and the comments, if any, received, from the Contractor.

E13. Termination of a Sub-contract

- E13.1 The Council may require the Contractor to terminate a Sub-contract where it considers that:
- (a) the Sub-contractor may prejudice the provision of the Services or may be acting contrary to the interests of the Council;
 - (b) the Sub-contractor is considered to be unreliable and/or has not provided reasonable or any services to its other customers; and/or
 - (c) the Sub-contractor employs unfit persons or is itself an unfit person, provided that such right shall not be exercised unreasonably, frivolously or vexatiously by the Council.

E13.2 In the event that the Council exercises its right under Clause E13.1 the Contractor shall remain responsible for maintaining the provision of the Services.

E14. Force Majeure

E14.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligation under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of the Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract either Party may terminate the Contract with immediate effect by notice in writing.

E14.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

E14.3 The Party affected by the Force Majeure ("the Affected Party") shall as soon as reasonably practicable issue a Force Majeure Notice which shall include details of the Force Majeure, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effects.

E14.4 If the Contractor is the Affected Party it shall not be able to claim relief under this Clause E14 to the extent that the consequences of the relevant Force Majeure:

- (a) are capable of being mitigated by any of the Services including the Services provided in terms of the BCDR Plan but the Contractor has failed to do so; and/or
- (b) should have been foreseen and prevented or avoided by a prudent provider of services operating to the Standards required by this Contract

E14.5 As soon as practicable after the Affected Party issues the Force Majeure Notice and at regular intervals thereafter the Parties shall consult with each other in good faith and use all reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken to enable continued provision of the Services affected by the Force Majeure.

E14.6 Where as a result of the Force Majeure:-

- (a) an Affected Party fails to perform its obligations in accordance with the Contract then during the continuance of the Force Majeure:-
 - (i) the other Party shall not be entitled to exercise any rights to terminate the Contract in whole or in part as a result of such failure; and
 - (ii) neither Party shall be liable for any Default arising as a result of such failure
- (b) the Contractor fails to perform its obligations in accordance with the Contract the Contractor shall be entitled to receive payment of the Price (or a proportionate payment of them) only to the extent that the Services (or part of the Services) continue to be provided in accordance

with the terms of the Contract during the occurrence of the Force Majeure.

E15. Consequences of expiry / termination

- E15.1 In any dispute, difference or question arising in respect of:-
- (a) the interpretation (except so far as the same may relate to the amount recoverable from the Contractor in respect of any loss resulting from such termination of the Contract) or
 - (b) the right of the Council to terminate the Contract; or
 - (c) the amount or value of any such financial or other advantage;
- the decision of the Council shall be final and conclusive.
- E15.2 Unless otherwise expressly provided in the Contract:-
- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Contractor under this Contract.
- E15.3 At the expiry or earlier termination of the Contract Period (howsoever arising) or immediately after the Contract Period the Contractor shall provide assistance to the Council and any Replacement Contractor in order to ensure an effective handover of the Contract (which may include handover of all work then in progress). Where the Contract Period is terminated by the Council other than in terms of Clause E11 the Contractor shall provide such assistance at no charge.
- E15.4 At the expiry or termination of the Contract (howsoever arising) the Contractor shall:-
- (a) in respect of all documents and information held by the Contractor under the Contract, (other than any documents or information containing Personal Data which shall be dealt with in terms of Clause H12) at the sole option of the Council either:-
 - (i) return all such documents and information to the Council within 10 Working Days of the date of such expiry or termination; or
 - (ii) destroy or delete all such documents and information within a specified time period determined by the Council and the Contractor shall provide confirmation of such destruction/deletion to the Council within 2 Working Days of the destruction/deletion; and
 - (b) immediately deliver to the Council or such other party as the Council may specify all Property (including materials and access keys) used in the performance of its obligations under the Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or Sub-contractors. In the event the Contractor fails to do so, the Council may recover possession thereof and the Contractor grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or Sub-contractors where any such items may be held.

- E15.5 Notwithstanding the expiry or termination of the Contract Clauses C10 (Exit Management), D1 (Liability and Indemnity), D2 (Insurance), D3 (Warranties and Representations), H6 (Disclosure and Freedom of Information) H10 (Confidential Information) and H15 (TUPE) will continue in full force and effect and may be founded upon by either Party.
- E15.6 In the event of either Party terminating the Contract in terms of Clause E the Council reserves the right to enter into a Contract on the same terms and conditions with a Replacement Contractor. The Contractor shall have no right to object to the Council entering into a contract with a Replacement Contractor in the event of the Contract between the Council and the Contractor being terminated in terms of Clause E.
- E15.7 Where the Council terminates the Contract other than in terms of Clause E11 and enters into a contract with a Replacement Contractor the Council may recover from the Contractor the cost reasonably and properly incurred of entering into such contract and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Council to the Contractor (for Services provided by the Contractor prior to termination and in accordance with the Contract but where payment has yet to be made by the Council) until the Council has established the final cost of making those other arrangements.
- E15.8 On the expiry or termination of this Contract or any part thereof the Contractor shall repay to the Council any monies paid up to and including such date of termination other than monies in respect of the Services or part thereof properly performed in accordance with this Contract within 10 Working Days of receipt of a written demand from the Council.

F REMEDIES

F1. Council remedies

- F1.1 Without prejudice to the Council's rights of termination or suspension set out in Clause E the Council may if the Contractor commits a Default (whether or not any part of the Services have been provided) do any of the following:-
- (a) give the Contractor the opportunity to:-
 - (i) remedy the Default (at the Contractor's expense) together with any damage resulting from such Default ; or
 - (ii) provide replacement Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled in accordance with the Council's instructions;
 - (b) carry out itself , at the Contractor's expense, any work necessary to make the provision of the Services comply with this Contract; or
 - (c) instruct the Contractor to comply with the process set out in Clause X8 (Rectification Plan Process).
- F1.2 Where the Council exercises any of its step in rights under Clause F1 or appoints a Replacement Contractor to provide the Services in terms of Clause E15 the Council shall have the right to charge the Contractor for and the Contractor shall on demand pay any costs reasonably incurred by the Council (including any reasonable administration costs) in respect of the provision of any part of the Services by the Council or by a third party. The Council will use its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

F2. Contractor remedies

F2.1 If the Contractor has failed to:-

- (a) provide the Services in accordance with the Service Levels; or
- (b) comply with its obligations under this Contract

and can demonstrate that this failure would not have occurred but for a specific act or omission by the Council then:-

- (i) the Contractor shall not be treated as being in breach of this Contract to the extent that the Contractor can demonstrate that the Contractor's failure was caused by the Council; and
- (ii) the Council shall not be entitled to exercise any rights that may arise as a result of the Contractor's failure to terminate this Contract.

F2.2 Where the Contractor's failure occurs in the circumstances set out in Clause F2.1 and constitutes a Service Failure:-

- (a) the Contractor shall not be liable to accrue service credits if the use of service credits has been provided for in the Procurement Documents or the Contract;
- (b) the Council shall not be entitled to any compensation for critical Service Failure if compensation has been provided for in the Procurement Documents or the Contract; and
- (c) the Contractor shall be entitled to invoice for the Price for the provision of the relevant Services affected by the Council's specific act or omission.

In each case to the extent that the Contractor can demonstrate that the Service Failure was caused by a specific act or omission of the Council.

F2.3 The Contractor shall within ten (10) Working Days of becoming aware that a failure is likely to occur give the Council notice in writing setting out details of:-

- (a) the Contractor's failure;
- (b) the Council's act or omission and its effect on the Contractor's ability to meet its obligations under this Contract; and
- (c) the relief claimed by the Contractor.

F2.4 Following receipt of the notice referred to in Clause F2.3 the Council shall as soon as reasonably practicable consider the nature of the Contractor's failure and the alleged act or omission of the Council and consider whether it agrees with the Contractor's assessment set out in the notice as to the effect of the relevant act or omission by the Council and its entitlement to relief, consulting with the Contractor where necessary.

F2.5 Any modification that is required to the Implementation Plan or the Contract as a result of this Clause F2 shall be implemented in accordance with the procedure set out in Clause C5 (Change control process).

F3 Remedies cumulative

F3.1 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.

G. DISPUTE RESOLUTION

G1. Dispute resolution

- G1.1 Both parties will use their reasonable endeavours to resolve any dispute between them in respect of the Contract and to reach an amicable and workable resolution of the matter in dispute within 10 Working Days of either Party notifying the other of the dispute arising or within such other mutually acceptable timescale. Such endeavours shall involve the escalation of the dispute to the executive director (or equivalent) of each Party.
- G1.2 The Parties shall not institute court proceedings until the procedures set out in Clause G1.1 have been completed save that:-
- (a) either Party may at any time before court proceedings are commenced, serve a notice in terms of Clause A4 (Notices) on the other Party requiring the dispute to be referred to and resolved by arbitration in accordance with Clause G1.3 or by mediation in accordance with Clause G1.4 to which the other Party may consent as it sees fit and
 - (b) if either Party intends to commence court proceedings it shall serve a notice in terms of Clause A4 (Notices) of its intention on the other Party and that Party shall have 21 calendar days following receipt of such notice to serve a reply requiring the dispute to be referred to and resolved by arbitration in accordance with Clause G1.3 or by mediation in accordance with Clause G1.4.
- G1.3 In the event that any arbitration proceedings are commenced in terms of Clause G1.2:-
- (a) the arbitration shall be governed by the provisions of the Arbitration (Scotland) Act 2010;
 - (b) the Party giving notice to the other Party of their intention to submit the dispute to arbitration shall provide details of the issues to be resolved;
 - (c) the Scottish Arbitration Rules in force at the date that the dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - (d) if the Parties fail to agree the appointment of the arbitrator within 10 Working Days of the notice being given in terms of Clause G1.3 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed in terms of the Scottish Arbitration Rules; and
 - (e) the arbitration proceedings shall be governed by and interpreted in accordance with the law of Scotland.
- G1.4 In the event that mediation proceedings are commenced in terms of Clause G1.2 the procedure for mediation and consequential provisions relating to mediation are as follows:-
- (a) a neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the Parties or if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other then either Party may apply to a mediation provider to appoint a Mediator;
 - (b) in the event of the Mediator agreed upon by the Parties being unable or unwilling to act either Party may apply to a mediation provider to appoint a Mediator;
 - (c) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at

any stage seek assistance from a mediation provider to provide guidance on a suitable procedure;

- (d) unless otherwise agreed all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- (e) if the Parties reach agreement on the resolution of the dispute the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- (f) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- (g) if the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

G1.5 Notwithstanding the terms of Clauses G1.2 or G1.3 either Party shall be entitled to seek an interim order restraining the other Party from doing any act or compelling the other Party to do any act from any court of competent jurisdiction.

G1.6 For the avoidance of doubt the Contractor shall remain responsible for the provision of the Services and the Council shall remain responsible for payment of the Price in terms of the Contract during any period of dispute in terms of this Clause G1.

H STATUTORY OBLIGATIONS

H1. Governing Law

H1.1 The Contract shall be construed and interpreted in accordance with Scots Law and any disputes, issues or claims arising out of or in connection with the Contract or its subject matter or formation shall be subject to the exclusive jurisdiction of the Scottish Courts.

H1.2 The Contractor shall be responsible for obtaining and maintaining all licences, authorisations, consents or permits required in relation to the performance of its obligations under this Contract.

H1.3 The Contractor shall comply with the Standards and all applicable law in performing its obligations under this Contract.

H2 Prevention of corruption

H2.1 The Contractor shall not, and shall ensure that any Staff shall not, commit any of the prohibited acts listed in this Clause H2. For the purposes of this Clause H2 a prohibited act is committed when the Contractor or any Staff:-

- (a) directly or indirectly offers, promises or gives any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity; or
 - (iii) show or refrain from showing favour or disfavour to any person in relation to the Contract or any other contract;

- (b) directly or indirectly requests, agrees to receive or accepts any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract; or
 - (c) commits any offence:-
 - (i) Under the Bribery Act 2010;
 - (ii) Under legislation creating offences concerning fraudulent acts;
 - (iii) At common law concerning fraudulent acts relating to the Contract or any other contract with the Council; or
 - (iv) Defrauding, attempting to defraud or conspiring to defraud the Council.
- H2.2 The Contractor warrants, represents and undertakes that it is not aware of any financial or other advantage being offered, promised or given to the Council or any other public body or any person working for or engaged by or on behalf of the Council or any other public body in connection with the Contract, or that an agreement has been reached to that effect, in connection with the execution of the Contract, excluding any arrangements of which full details have been disclosed in writing to the Council before execution of the Contract.
- H2.3 The Contractor shall immediately notify the Council in writing if it becomes aware of or suspects any Default of Clauses H2.1 or H2.2 or has reason to believe that it or any of its Staff have:-
- (a) been subject to an investigation or prosecution which relates to an alleged prohibited act ;
 - (b) been listed by any government department or agency as being debarred, suspended , proposed for suspension or debarment , or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a prohibited act; or
 - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a prohibited act in terms of Clauses H2.1
- H2.4 If the Contractor notifies the Council that it suspects or knows that there may be a Default of Clauses H2.1 or H2.2 the Contractor must respond promptly to the Council's enquiries, co-operate with any investigation and allow the Council to audit books, records and any other relevant documentation.
- H2.5 If the Contractor, its Staff or anyone acting on the Contractor's behalf engages in conduct prohibited by Clause H2.1 the Council shall be entitled to terminate the Contract in terms of Clause E1 (Termination on the occurrence of a Termination Event).
- H2.6 Notwithstanding the provisions of Clause G1 (Dispute Resolution) any dispute relating to the interpretation of Clause H2 or the amount or value of any gift, consideration or commission shall be determined by the Council, acting reasonably having given due consideration to all relevant factors, and its decision shall be final and conclusive.
- H2.7 In determining whether the Contractor has committed a prohibited act as set out in Clause H2.1 the Council shall act in a reasonable and proportionate manner having regard to such matters as the gravity of the conduct

prohibited by Clause H2.1 and the identity of the person performing that prohibited conduct

H3. Prevention of Fraud

- H3.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice to prevent Fraud by its Staff and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Council.
- H3.2 The Contractor shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- H3.3 If the Contractor, its Staff or its Sub-contractors commits Fraud in relation to this or any other contract with the Council, the Council shall be entitled to terminate the Contract in terms of Clause E1 (Termination on the occurrence of a Termination Event).
- H3.4 The Contractor shall co-operate fully with the Council and assist it in the identification of Service Users who may be unlawfully claiming state benefits. The Council may from time to time brief the Contractor as to the co-operation and assistance it reasonably requires including the provision of information regarding Fraud by Service Users. On receipt of the information, further evidence may be collected by the Council or other department, office or agency of Her Majesty's Government with a view to prosecution.

H4 Blacklisting activities

- H4.1 The Contractor shall comply with the provisions of:-
- (a) the Employment Relations 1999 Act (Blacklists) Regulations 2010
 - (b) Section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992 and/or
 - (c) the Data Protection Legislation,
- and shall not unlawfully process Personal Data in connection with any blacklisting activities in connection with the performance of their obligations under the Contract.
- H4.2 In the event of the Contractor having breached Clause H4.1 the Council shall be entitled to terminate the Contract in terms of Clause E1(Termination on the occurrence of a Termination Event).

H5. Health and safety

- H5.1 The Contractor shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to its Staff and other persons in connection with the Contractor's performance of its obligations under the Contract.
- H5.2 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.
- H5.3 While on the Council's premises the Contractor shall comply with any health and safety measures implemented by the Council in respect of the Council's staff and other persons working there.

- H5.4 The Contractor shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.
- H5.5 The Council shall notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Contract.
- H5.6 The Contractor shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract where that incident causes any personal injury or damage to property which could give rise to personal injury.
- H5.7 Where the Services to be provided in terms of the Contract include the use of tools, plant and machinery the Contractor will, in terms of the Supply of Machinery (Safety) Regulations 2008 (as amended), use equipment which will reduce risks to as low a level as reasonably practicable, making use of the latest available technology.
- H5.8 The Contractor shall ensure that any machinery used by them in connection with the provision of the Services in terms of the Contract is safe for use in accordance with the requirements of Section 6 of the Health and Safety at Work etc Act 1974.
- H5.9 The Council may inspect and examine the manner in which the Contractor delivers the Contract on the Premises as part of a health and safety assessment. The Contractor shall take account of all reasonable representations made by the Council following such inspection.

H6. Disclosure and Freedom of Information

- H6.1 The Contractor acknowledges that the Council is subject to the requirements of FOISA and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Contractor's expense) to enable the Council to comply with these Information disclosure requirements.
- H6.2 The Contractor shall (and shall procure that its' Sub contractor shall):
- (a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of FOISA.
- H6.3 The Council reserves the right to disclose Information contained within the Contract and any supporting correspondence, notes etc. held by them in compliance with a Request for Information (the decisions of the Council in relation to the interpretation of FOISA and the Environmental Information Regulations, including but not limited to whether - an exemption or exception applies

- if an exemption or exception applies, whether the public interest in giving out the information outweighs the public interest in holding back the information shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms).

- H6.4 In no event, shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
- H6.5 Without prejudice to Clause H6.3 it may be necessary for the Council to disclose Information to its elected members concerning the contents of the Tenders in order to allow them to fulfil their role as a member of the Council.
- H6.6 In any of the above circumstances in Clauses H6.3 and H6.5 the Contractor shall not treat this disclosure of the Information as a breach of this Contract.
- H6.7 The Contractor acknowledges that the Council may decide, acting in accordance with the Scottish Ministers' Code of Practice on the Discharge of Functions of Public Authorities under FOISA or the Environmental Information Regulations, to disclose Information
- (a) without consulting with the Contractor or
 - (b) following consultation with the Contractor and having taken its views into account.
- In the circumstances set out above the Council shall take reasonable steps where appropriate to give the Contractor advance notice or failing that to draw the disclosure to the Contractor's attention after any such disclosure.
- H6.8 The Contractor shall ensure that they retain all Information produced in the course of the Contract or relating to the Contract and shall permit the Council to inspect such records as requested from time to time.

H7 Equalities

- H7.1 The Contractor hereby confirms that it has, to the best of its knowledge and belief, complied with its statutory obligations under the Equality Act 2010 and all other relevant statutory obligations in relation to equalities which apply in the United Kingdom or their EU equivalent ("the Equalities Legislation") and shall continue to comply with them in a manner which is proportionate and relevant to the nature of the Contract.
- H7.2 The Contractor shall take all reasonable steps to secure that its Staff or agents and all suppliers and any Sub-contractors employed in the delivery of the Contract comply with the Equalities Legislation.
- H7.3 The Contractor shall notify the Council in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor under the Equalities Legislation.
- H7.4 The Contractor shall indemnify the Council with respect to all costs, charges and expenses (including legal and administrative expenses) incurred by the Council arising out of or in connection with any such investigation or proceedings brought against the Contractor under the Equalities Legislation.
- H7.5 The Council reserves the right to inspect the measures/steps taken by the Contractor to comply with the terms of Clauses H7.1 and H7.2 upon giving the Contractor reasonable notice of its intention to do so.

H8 Tax arrangements

- H8.1 Where the Contractor is liable to be taxed in the UK in respect of the consideration received under this Contract, the Contractor shall comply with the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”) and all other statutes and regulations relating to income tax in force throughout the Contract Period in respect of that consideration.
- H8.2 Where the Contractor is liable to National insurance Contributions (“NICs”) in respect of the consideration received under this Contract, the Contractor shall comply with the Social Security Contributions and Benefits Act 1992(SSCBA) and all other statutes and regulations relating to national insurance contributions in force throughout the Contract Period in respect of the consideration
- H8.3 The Council reserves the right, at any time throughout the Contract Period, to request the Contractor to provide them with information which demonstrates the Contractor’s compliance with Clauses H8.1 and H8.2 or provide reasons why those clauses do not apply to the Contractor.
- H8.4 The Contractor shall use all reasonable endeavours to obtain the consent of its Staff to the provision of information to the Council in terms of Clause H8.3.
- H8.5 In relation to the right reserved to the Council in terms of Clause H8.3 the request will state the information required and the period within which the Contractor must provide that evidence.
- H8.6 The Contractor agrees to the Council supplying any information which it receives from the Contractor in terms of Clause H8.3 to the Commissioners of Her Majesty’s Revenue and Customs (“HMRC”) for the purpose of the collection and management of revenue for which HMRC are responsible.

H9 Tax compliance

- H9.1 The Contractor represents and warrants that as at the Commencement Date it has notified the Council in writing of any occasions of tax non-compliance or any litigation that it is involved in that is in connection with any occasions of tax non-compliance.
- H9.2 If at any point during the Contract Period, an occasion of tax non-compliance occurs the Contractor shall:-
- (a) notify the Council in writing of such fact within 5 Working Days of its occurrence;
 - (b) promptly provide to the Council details of the steps taken/to be taken by the Contractor to address the occasion of tax non-compliance and to prevent the same from recurring together with any mitigating factors that it considers relevant; and
 - (c) provide such other information in relation to the occasion of tax non-compliance as the Council may require

H10 Confidential Information

- H10.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract each Party shall:-
- (a) treat the other Party’s Confidential Information as confidential and safeguard it accordingly;
 - (b) not disclose the other Party’s Confidential Information to any other person without the owner’s prior written consent;

- (c) treat all Confidential Information belonging to any Service User as confidential and safeguard it accordingly; and
 - (d) not disclose any Confidential Information belonging to any Service User to any other person without their approval except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.
- H10.2 Both parties shall take all necessary precautions to ensure that all Confidential Information obtained from any Service User under or in connection with this Contract :-
- (a) is given only to such of its staff and professional advisers or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract; and
 - (b) is treated as confidential and not disclosed (without the Service User's approval) or used by any of their staff or such professional advisers or consultants other than for the purposes of this Contract.
- H10.3 The Contractor may only disclose the Council's Confidential Information to the Staff who are directly involved in the performance of the Contract and who need to know the Confidential Information and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- H10.4 Both Parties shall ensure that their staff do not use any of the Confidential Information received in connection with this Contract other than for the purposes of this Contract.
- H10.5 At the written request of the Council, the Contractor shall procure that members of Staff or such professional advisers or consultants identified by the Council give a confidentiality undertaking before commencing any work in accordance with this Contract.
- H10.6 Clause H10 shall not apply to the extent that:-
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure including any requirements for disclosure under FOISA or the Environmental Information Regulations
 - (b) such Confidential Information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the Confidential Information owner;
 - (c) such Confidential Information was obtained from a third party without obligation of confidentiality;
 - (d) such Confidential Information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - (e) it is independently developed without access to the other Party's Confidential Information.
- H10.7 Nothing in this Contract shall prevent the Council from disclosing the Contractor's Confidential Information:-
- (a) to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (b) to any consultant, professional adviser, contractor, supplier or other person engaged by the Council in connection with this Contract; or

- (c) on a confidential basis for the purpose of the exercise of its rights under the Contract including but not limited to a body for auditing purposes, to a body to novate, assign or dispose of its rights under the Contract, to a Replacement Contractor and for the purpose of the examination and certification of the Council's accounts.
- H10.8 The Council shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to this Clause is made aware of the Council's obligations of confidentiality.
- H10.9 Nothing in this Clause shall prevent either Party from using any techniques, ideas or know-how gained through the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
- H10.10 Any breach by either Party of Clauses H10.1 or H10.2 shall be a Material Breach for the purposes of Clause E2 (Termination on Material Breach) and shall entitle the other Party to terminate the Contract by issuing a Termination Notice.
- H10.11 The Parties acknowledge that except for any information which is exempt from disclosure in accordance with the provisions of FOISA the content of this Contract is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of FOISA.
- H10.12 Notwithstanding any other term of this Contract, the Contractor hereby gives consent for the Council to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of FOISA redacted) including from time to time agreed changes to the Contract to the general public.
- H10.13 The Council may disclose to its assignee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Council shall authorise the assignee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the assignee gives a confidentiality undertaking in relation to such Confidential Information if required to do so by the Contractor.
- H11. Registration**
- H11.1 Where the Procurement Documents specified a requirement for Staff involved in the provision of the Services or the Contractor to be registered with a particular Regulatory Body the Contractor will ensure that any Staff involved in the provision of the Services are so registered and that their registration remains in place throughout the Contract Period.
- H11.2 The Contractor will ensure that any codes of practice issued by such Regulatory Body will be followed at all time by the Staff involved in the provision of the Services.

H11.3 In the event of the Contractor becoming aware that it or any of its Staff no longer have the appropriate registration referred to in Clause H11.1 they will notify the Council's Nominated Person immediately in writing and the Council shall be entitled to terminate the Contract in terms of Clause E8 (Termination due to cancellation of registration).

H12 Data protection

In the event of the transfer of any Personal Data being involved in the Contract the following Clauses shall apply.

H12.1 Where the Contractor is acting as a Processor in relation to the Personal Data it is agreed that for the purposes of Data Protection Legislation, the Council shall be a Controller and the Contractor a Processor of all Personal Data to which this Contract relates.

H12.2 Where the Contractor is acting as a Controller in relation to the Personal Data it is agreed that, for the purposes of Data Protection Legislation, the Contractor shall be a Controller of all Personal Data to which this Contract relates.

H12.3 In order to ensure compliance with Data Subject Rights, the Contractor shall be required to enter into an Agreement with the Council. This Agreement shall set out the obligations on the Contractor in relation to the processing/sharing of the Personal Data. The terms and conditions of such Agreement shall be determined solely by the Council taking account of the obligations upon it in terms of Data Protection Legislation but after consultation with the Contractor.

H12.4 The Parties agree that any breach of the Agreement may result in the termination of this Contract.

H13 PVG – employer engaging others

H13.1 Where the provisions of the PVG Act apply to this Contract and the Contractor is an employer engaging others the Contractor shall comply with the PVG Act and shall ensure that all individuals who carry out Regulated Work when providing the Services are appropriately vetted in accordance with the requirements of the PVG Act and are Scheme Members for that type, or those types, of Regulated Work.

H13.2 The type(s) of Regulated Work for which individuals require to be a Scheme Member shall be determined by reference to the PVG Act, secondary legislation and Scottish Government guidance.

H13.3 The Contractor will notify the Council immediately upon receipt from Disclosure Scotland and/or the Scottish Ministers of a notification of any matter which may have an adverse effect on an individual's suitability to carry out Regulated Work and will confirm what action has been or will be taken following thereon.

H13.5 The Contractor shall provide the Council on request, with confirmation of its compliance with the requirements of this Clause H13.

H13.6 The Contractor's compliance with the terms of this Clause H13 shall be monitored in terms of Clause C9 (Monitoring of contract performance). If the Contractor fails to comply with its obligations under this Clause, the Council

shall be entitled to regard this as a Default entitling the Council to terminate the Contract in terms of Clause E3 (Termination on Default).

H14. PVG – individual not engaging others

- H14.1 Where the provisions of the PVG Act apply to this Contract and the Contractor is an individual not engaging others to provide the Services the Contractor will comply with the PVG Act, all secondary legislation and all relevant Scottish Government guidance in relation to the PVG Act when providing the Services;
- H14.2 The type(s) of Regulated Work for which the Contractor requires to be a Scheme Member shall be determined by reference to the PVG Act, secondary legislation and Scottish Government guidance.
- H14.3 The Contractor shall not commence provision of the Services until the Council has notified the Contractor that it is satisfied of the Contractor's suitability to carry out Regulated Work when providing the Services.
- H14.4 In the event of the Council not being satisfied of the Contractor's suitability to carry out Regulated Work the Council shall be entitled to suspend all or part of the Contract in terms of Clause E9 (Partial termination, suspension and partial suspension) .
- H14.5 The Contractor will notify the Council immediately upon receipt from Disclosure Scotland and/or the Scottish Ministers of a notification of any matter which may have an adverse effect on the Contractor's suitability to carry out Regulated Work and will confirm what action has been or will be taken following thereon.
- H14.6 In the event of the Council receiving notification from the Contractor in terms of Clause H14.5 the Council will consider the terms of the notification received and in the event of the Council not being satisfied with the Contractor's suitability for continued provision of the Services the Council will be entitled to regard this as a Default entitling the Council to terminate the Contract in terms of Clause E3 (Termination on Default).
- H14.7 The Contractor shall suspend the provision of the Services pending the Council's determination of the Contractor's suitability for continued provision of the Services in terms of Clause H14.6. The Council shall have no liability whatsoever to the Contractor during any period of suspension in terms of this Clause H14.7.
- H14.8 The Contractor's compliance with the terms of this Clause H14 shall be monitored in terms of Clause C9 (Monitoring of contract performance) throughout the Contract Period.

H15 TUPE

- H15.1 During the 12 months preceding the expiry of this Contract or after the Council has given notice to terminate this Contract or at any other time as directed by the Council and within 10 Working Days of the Council's request the Contractor shall fully and accurately disclose to the Council and shall ensure that any relevant Sub-contractors accurately disclose any and all Employee Liability Information in relation to all personnel engaged in providing the Services (whether engaged by the Contractor or the Sub-

contractor). This shall include all relevant employees who are to transfer as a consequence of a Relevant Transfer.

- H15.2 In the event of the Council exercising its right in terms of Clause H15.1 above the Contractor shall provide the relevant Employee Liability Information to the Council within 10 Working Days of receiving a request in terms of Clause H15.1 from the Council.
- H15.3 Where the Contractor provides information in accordance with Clause H15.1 and the Contractor or Sub-contractor makes or becomes aware of any changes or discovers new information the Contractor shall notify the Council within seven days of any such change or discovery.
- H15.4 The Contractor warrants that all of the information provided to the Council in terms of Clauses H15.1 and H15.3 shall to the best of their knowledge and belief be accurate and complete. The Contractor authorises the Council to use any and all of the information as it considers necessary for the purposes of its business or for informing any tender for any services which are substantially the same as the Services (or part thereof).
- H15.5 The Council and the Contractor agree that where the identity of a contractor (including the Incumbent Contractor) of any service which constitutes or which will constitute part of the Services is changed pursuant to this Contract (including upon termination of this Contract) then the change may constitute a Relevant Transfer.
- H15.6 Following the Commencement Date, when any Relevant Transfer occurs as a result of an Assignment or Change of Control during the Contract Period the Contractor shall and shall, as far as reasonably practicable, ensure that any new Contractor of the relevant Services complies with all of its obligations under TUPE
- H15.7 In the event that the Contractor enters into any Sub-contract in connection with this Contract it shall impose obligations on its Sub-contractor in the same terms as those imposed on it in terms of this clause H15 and shall ensure that each Sub-contractor complies with such terms. The Contractor shall indemnify the Council and keep the Council indemnified in full from and against all direct, indirect or consequential liability or loss awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of a Sub-contractor to comply with such terms.
- H15.8 The Contractor shall indemnify the Council and any Replacement Contractor and keep the Council and any Replacement Contractor indemnified in full from and against all direct, indirect or consequential liability or loss awarded against or incurred or paid by the Council or any Replacement Contractor as a result of or in connection with:-
- (a) the employment or termination of employment of any relevant employee or employees of any Sub-contractor during any period prior to and including the date of expiry or termination of this Contract; and
 - (b) any claim brought against the Council or any Replacement Contractor as a result of the Contractor's failure to comply with any of its obligations under the TUPE Regulations

H15.9 This Clause H15 shall survive the expiry or termination of this Contract, howsoever occurring, and may be founded upon by the Council and the Contractor notwithstanding such expiry or termination

H16. Licences

H16.1 Where the Procurement Documents specified a requirement for the Contractor and/or Staff involved in the provision of the Services to hold a particular licence/licences the Contractor and/or the Staff shall remain in possession of such licence/licences throughout the Contract Period.

H16.2 The Council shall have the right to request sight of such licences at any time during the Contract Period upon giving the Contractor 2 Working Days notice of such request.

H16.3 In the event of the licence/licences requiring to be renewed during the Contract Period the Contractor shall ensure that such renewal is dealt with promptly and shall ensure that they or their Sub-contractor remain in possession of such licence/licences throughout the Contract Period.

H16.4 The Contractor will notify the Council in writing of any conditions imposed on any licence required under Clause H16.1. Following such notification the Council, at its sole discretion, shall have the option to allow the Contractor to continue to provide the Services or to terminate the Contract in terms of Clause E8 (Termination due to failure to have or maintain a licence).

H16.5 Failure by the Contractor or their Sub-contractor to obtain and keep a licence/licences in force throughout the Contract Period shall entitle the Council to terminate the Contract in terms of Clause E9 (Termination due to failure to have or maintain a licence).

H17 Human rights

H17.1 In the event of the Human Rights Act 1998 applying to the Services being provided under this Contract the Contractor shall observe and comply with the terms of the Human Rights Act 1998 ("the 1998 Act") .

H17.2 The Contractor undertakes that the Services it is providing on behalf of the Council comply in all respects with the 1998 Act and :-

- (a) If they have not already done so, the Contractor will carry out an audit of the Services to ensure that they are compatible with the 1998 Act;
- (b) During the Contract Period the Contractor will monitor the Services for ongoing compliance with the 1998 Act and take any remedial action with may be required;
- (c) The Contractor upon request will provide the Council with evidence that satisfies the Council that the Services are compliant with the 1998 Act; and
- (d) The Contractor will indemnify the Council against any and all claims that may be made against the Council due to a breach of the 1998 Act which is caused by or arises out of the Services or any actions of the Contractor under the Contract.

X SERVICES

X1. Services to be provided

X1.1 The Contractor shall provide the Services during the Contract Period in accordance with the Council's requirements as set out in the Procurement

Documents/Specification and the terms and conditions of the Contract in exchange for payment of the Price by the Council.

- X1.2 The Contractor will comply with any conditions detailed in the Procurement Documents which relate to compliance with any aspect of environmental, social and/or employment law in the performance of the Contract.
- X1.3 The Contractor will notify the Council in writing immediately if, for any reason, it is unable to provide any of the Services in accordance with the Contract. Upon receipt of such notification from the Contractor the Council shall have the right to treat this as a Material Breach and terminate the Contract in terms of Clause E2 (Termination on Material Breach).
- X1.4 In the event of the Contractor notifying the Council that it is temporarily unable to fulfil part of the requirements of the Contract in terms of Clause X5.7 and the parties cannot agree a solution the Council shall have the right to terminate the Contract in terms of Clause E2 (Termination on Material Breach).

X2. Location and manner of provision of the Services

- X2.1 Except where otherwise provided in the Contract the Contractor shall provide the Services to the Council through the Staff at the Premises.
- X2.2 The Council may inspect and examine the manner in which the Contractor provides the Services at the Premises and, if the Premises are not the Council's premises the Council may carry out such inspection and examination during normal business hours on giving the Contractor reasonable notice.
- X2.3 Unless stated otherwise in the Specification/Purchase Order timely provision of the Services shall be of the essence of the Contract including in relation to commencing the provision of the Services on a specified date or within the timescale agreed between the Parties. In the event of the Contractor not complying with any timescale for the provision of the Services the Council shall be entitled to treat this as a Material Breach and the provision of Clause E2 (Termination on Material Breach) shall apply.
- X2.4 The Contractor shall:
 - (a) at all times allocate sufficient resources with the appropriate expertise to provide the Services in accordance with this Contract;
 - (b) obtain and maintain throughout the Contract Period, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
 - (c) ensure that any documentation and training provided by the Contractor to the Council are comprehensive, accurate and prepared in accordance with Good Industry Practice;
 - (d) provide the Council with such assistance as the Council may reasonably require during the Contract Period in respect of the provision of the Services;
 - (e) deliver the Services in a proportionate and efficient manner; and
 - (f) gather, collate and provide such information as the Council may reasonably request for the purposes of ascertaining the Contractor's compliance with its obligations under this Contract.

- X2.5 An obligation on the Contractor to do, or to refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that all Sub-Contractors and Contractor Staff also do, or refrain from doing, such act or thing.
- X2.6 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council

X3 Volumes

- X3.1 The Contractor acknowledges and has submitted its Tender on the understanding that no guarantee is given by the Council in respect of the level or the value of the Services referred to in the Procurement Documents which are indicative only.

X4. Key Personnel

In the event of the Procurement Documents requiring Key Personnel to deliver the Services the following clauses shall apply.

- X4.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Council. The Key Personnel shall be responsible for such duties as are detailed in the Contract Notice and/or the Procurement Documents and/or the Specification failing which such duties as shall be agreed in writing between the Parties.
- X4.2 The Contractor shall not remove or replace any Key Personnel unless:
- (a) requested to do so by the Council;
 - (b) the person concerned resigns, retires, dies or is on maternity or long-term sick leave;
 - (c) the person's employment or contractual arrangement with the Contractor or a Sub-Contractor is terminated for material breach of contract by the employee; or
 - (d) the Contractor obtains the Council's Approval.
- X4.3 The Contractor shall:
- (a) notify the Council promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Contractor shall ensure appropriate temporary cover for that role);
 - (b) ensure that any role occupied by any of the Key Personnel is not vacant for any longer than ten (10) Working Days;
 - (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least three (3) Months' notice;
 - (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services;
 - (e) ensure that any replacement Key Personnel:-
 - (i) has an appropriate level of qualification and experience; and
 - (ii) is fully competent to carry out the tasks assigned to the Key Personnel they are replacing.

- (f) not remove or replace any Key Personnel during the Contract Period without Approval; and
- (g) procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Contract Period without Approval.

X4.4 Any Approval granted in terms of Clause X4.2 shall be conditional upon appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in the Key Personnel.

X4.5 The Council may require the Contractor to remove any Key Personnel that the Council considers to be unsatisfactory in any respect. The Council shall not be liable for the cost of replacing any Key Personnel.

X5 Staff

X5.1 The Contractor shall:

- (a) where requested to do so, provide the Council with a list of the names of all the Staff who may require admission to the Council's Premises, specifying the capacity in which they require admission and giving such other particulars as the Council may reasonably require;
- (b) ensure that all Staff involved in the provision of the Services:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) act in accordance with Good Industry Practice and, where applicable the Standards;
 - (iii) comply with all reasonable requirements of the Council concerning conduct at the Council's Premises
 - (iv) clearly display an identity card showing the name and address of the Contractor and bearing the name and photograph of the member of Staff or some form of identifying corporate wear while on the Council's Premises
- (c) retain overall control of the Staff at all times so that the Staff shall not be deemed to be employees, agents or contractors of the Council;
- (d) notify the Council immediately of any change in the number of Staff involved in the delivery of the Services which will or is likely to impact on the delivery of the Services and agree with the Council the steps the Contractor is required to take to ensure that there is no detriment to the provision of the Services;
- (e) be liable at all times for all acts or omissions of the Staff, so that any act or omission of a member of the Staff which results in a Default under this Contract shall be a Default by the Contractor;
- (f) use all reasonable endeavours to minimise the number of changes in the Staff;
- (g) replace (temporarily or permanently, as appropriate) any Staff as soon as practicable if they have been removed or are unavailable for any reason whatsoever;
- (h) bear the costs associated with any replacement of any Staff ; and
- (i) procure that the Staff shall vacate the Council's Premises immediately upon the Expiry Date.

- X5.2 If the Council reasonably believes that any of the Staff are unsuitable to undertake work in respect of this Contract, it may by written notice to the Contractor:
- (a) refuse admission to the relevant person(s) to the Council's Premises; and/or
 - (b) direct the Contractor to end the involvement in the provision of the Services of the relevant person(s).
- X5.3 The decision of the Council as to whether any person is to be refused access to the Council's Premises shall be final and conclusive.
- X5.4 The Contractor shall immediately inform the Council of any actual or potential industrial action, whether such action is being taken/is to be taken by their Staff or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- X5.5 In the event of industrial action by its Staff, the Contractor shall seek Approval from the Council in respect of its proposals to continue to perform its obligations under the Contract.
- X5.6 If the Contractor's proposals referred to in Clause X5.4 above are considered insufficient or unacceptable by the Council acting reasonably, then the Council shall have the right to terminate the Contract with immediate effect by notice in writing.
- X5.7 If due to no fault of the Contractor the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of the normal business of the Council, the Contractor may request the Council's Approval for a reasonable allowance of time to fulfil their obligations under the Contract.
- X6 Provision and removal of Equipment**
- X6.1 Unless stated otherwise in the Procurement Documents, the Tender and/or the Purchase Order, the Contractor shall provide all the Equipment necessary for the provision of the Services.
- X6.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining the Approval of the Council.
- X6.3 All Equipment brought onto the Premises in connection with the provision of the Services shall be at the Contractor's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Council's Default.
- X6.4 The Contractor shall provide for the haulage or carriage to the Premises and the removal of Equipment when no longer required in connection with the provision of the Services at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- X6.5 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- X6.6 The Contractor shall, at the Council's written request, at its own expense and as soon as reasonably practicable:-

- (a) remove from the Premises any Equipment which in the reasonable opinion of the Council is hazardous, noxious or not in accordance with the Contract; and
- (b) replace such item with a suitable substitute item of Equipment.

X6.7 On completion of the Services and/or the Expiry Date, whichever is the later, the Contractor shall remove the Equipment together with any other materials used by the Contractor to provide the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained therein, other than fair wear and tear, which is caused by the Contractor or its Staff.

X7 Service Levels and Service Failure

X7.1 If required in terms of the Procurement Documents the Contractor shall ensure that the Services meet or exceed the Service Levels at all times throughout the Contract Period.

X7.2 The Council shall monitor the Contractor's performance in respect of each of the Service Levels in accordance with the provisions of Clause C9 (Monitoring of contract performance) and any other requirements notified by the Council to the Contractor from time to time.

X7.3 The Council shall be entitled to treat a Service Failure by the Contractor as a Default and the Contractor shall:-

- (a) take all reasonable steps to notify the Council immediately of the Service Failure (and in any event as soon as the Contractor becomes aware that the Service Failure has occurred);
- (b) where required by the Council provide the Council with a Rectification Plan in accordance with Clause X8 (Rectification Plan Process);
- (c) deploy all additional resources and take all remedial action that is necessary to rectify or to prevent the Service Failure from recurring; and
- (d) carry out the actions identified in the Rectification Plan in accordance with its terms.

X7.4 The Parties will review the Service Levels throughout the Contract Period. In the event of either Party wishing to propose changes to the Service Levels at any time throughout the Contract Period the Parties will follow the procedure set out in Clause C5 (Change Control Process).

X8 Rectification Plan Process

X8.1 Where the Council requires the Contractor to submit a Rectification Plan in terms of Clause X7.3 (b) the Parties shall comply with the Rectification Plan Process set out in this Clause X8.

X8.2 The Contractor shall within the timescales specified by the Council either:-

- (a) submit a draft Rectification Plan to the Council for approval; or
- (b) inform the Council that it does not intend to submit a Rectification Plan, in which case the Council shall be entitled to consider this refusal to be a Material Breach entitling the Council to terminate the Contract in terms of Clause E2 (Termination on Material Breach).

X8.3 The Council shall either approve the draft Rectification Plan within 10 Working Days (or such other period as notified by the Council to the

Contractor) of its receipt or it shall inform the Contractor why it cannot accept the draft Rectification Plan. In such circumstances, the Contractor shall submit a revised draft Rectification Plan to the Council within a minimum period of 10 Working Days (or such greater period as notified by the Council to the Contractor) of its receipt of the Council's comments. If no such notice is given the Contractor's draft Rectification Plan shall be deemed to be agreed.

- X8.4 Once agreed the Contractor shall immediately start work on the actions set out in the Rectification Plan.
- X8.5 If a Rectification Plan cannot be agreed the Council may elect to end the Rectification Plan Process and refer the matter for resolution by the dispute resolution procedure set out in Clause G1 (Dispute Resolution) or terminate the Contract by issuing a Termination Notice to the Contractor.
- X8.6 If a Rectification Plan is agreed between the Parties, but the Contractor fails to implement the Rectification Plan in accordance with its terms and by the required completion date , the Council may:-
- (a) give the Contractor a further opportunity to resume full implementation of the Rectification Plan; or
 - (b) escalate any issues arising out of the failure to implement the Rectification Plan under the dispute resolution procedure set out in Clause G1 (Dispute Resolution); or
 - (c) terminate the Contract by issuing a Termination Notice to the Contractor .

X9. BCDR Plan

- X9.1 Where required in terms of the Procurement Documents the Contractor shall have in place a BCDR Plan, in terms agreed with the Council, to ensure that the Services to the Council will be maintained in the event of disruption (including but not limited to, disruption to information technology systems) to the Contractor's operations and those of Sub-contractors to the Contractor, however caused. The BCDR Plan shall be available for the Council to inspect and to practically test at any reasonable time, and shall be subject to regular updating and revision throughout the Contract Period by the Contractor at their expense.
- X9.2 The Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then the matter shall be referred for resolution by the dispute resolution procedure set out in Clause G1 (Dispute Resolution).
- X9.3 At least once during each Contract Year the Contractor shall review the BCDR Plan and ensure that it is maintained and updated as may be necessary to reflect the then current state of the provision of the Services. The Council shall have the right to require the Contractor, at the Contractor's expense, to include any reasonable changes or provisions in each version of the BCDR Plan.
- X9.4 The Parties will follow the change control process set out in Clause C5 (Change Control Process) when considering any changes to the BCDR Plan in terms of this Clause X9.

X10 IPR– Licences granted by the Contractor

- X10.1 Except as otherwise provided within the Contract neither the Council or the Contractor shall acquire any right, title or interest in the other's pre-existing Intellectual Property Rights. The Contractor acknowledges that the Council Data is the property of the Council and the Council hereby reserves all Intellectual Property Rights which may exist in the Council Data.
- X10.2 Where required in connection with the provision of the Services the Contractor shall grant to the Council a non-exclusive, revocable, royalty free licence to use the Contractor's Intellectual Property Rights for the Contract Period.
- X10.3 Where a licence has been granted to the Council in terms of Clause X10.2 the Council shall have the right to sub-licence the rights granted to it by the Contractor to a third party provided that :-
- (a) the sub-licence is on terms no broader than those granted to the Council;
 - (b) the sub-licence authorises the third party to use the rights licensed only for purposes related to the Services or for any purpose relating to the exercise of the Council's business or function;
 - (c) if requested to do so, the third party will execute a confidentiality undertaking in favour of the Contractor
- X10.4 The Contractor shall gain Approval from the Council before using any material in relation to the performance of its obligations under the Contract which is/may be subject to any third party Intellectual Property Rights. The Contractor shall ensure that the owner of those rights grants to the Council a non-exclusive, perpetual, royalty free, irrevocable licence or, if the Contractor is a licensee of those rights shall grant to the Council an authorised sub-licence to use, reproduce, modify, develop and maintain the material. The licence /sub-licence shall include a right for the Council to sub – licence, transfer, novate or assign to a Replacement Contractor or any third party providing the Services to the Council.
- X10.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in providing the Services. The Contractor shall, during and after the Contract Period, indemnify the Council and keep them indemnified in full against all costs, expenses, damages and losses (whether direct or indirect) including any interest, penalties and reasonably and properly incurred legal and other professional fees awarded against or incurred or paid by the Council as a result of or in connection with any claim made against the Council for actual or alleged infringement of a third party's intellectual property arising out of or in connection with the provision or use of the Services to the extent that the claim is attributable to the acts or omission of the Contractor or any of their Staff.
- X10.6 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Council and , at its own expense, and subject to the Council's Approval use its best endeavours to :-
- (a) modify any or all of the Services without reducing the performance or functionality or substitute alternative Services of equivalent performance or functionality so as to avoid the infringement or the alleged infringement provided that the provisions herein shall apply with

any necessary changes to such modified Services or to the substitute Services; or

- (b) procure a licence to use and supply the Services which are the subject of the alleged infringement on terms and conditions which are acceptable to the Council,

and in the event that the Contractor is unable to comply with the provisions of this Clause X10.6 (a) or (b) within twenty (20) Working Days of receipt of the Contractor's notification the Council may terminate the Contract by issuing a Termination Notice to the Contractor .

X10.7 At any time during the Contract Period or following termination or expiry of the Contract the Contractor may terminate the licence granted to the Council under Clause X10.2 by giving 30 calendar days notice in writing (or such other period as agreed between the Parties) if the Council or any person to whom the Council grants a sub-licence breaches the terms of this Clause X10 or ,if the breach is capable of remedy, does not remedy the breach within 20 Working Days after the Contractor gives the Council written notice specifying the breach and requiring its remedy.

X10.8 In the event of the licence being terminated in terms of Clause X10.7 the Council shall:-

- (a) immediately cease use of any software the licence relates to:
- (b) at the discretion of the Contractor return or destroy documents and other tangible materials. If the Contractor hasn't made an election within 6 months of the termination of the licence the Council may destroy the documents and other tangible materials; and
- (c) ensure ,so far as reasonably practicable that any software and/or background IPR that are held in electronic, digital or other machine readable form ceases to be readily accessible from any computer or other device.

X11 IPR – Licences granted by the Council

X11.1 Where required in connection with the provision of the Services the Council shall grant the Contractor a non-exclusive, revocable, royalty free licence to use the Council's Intellectual Property Rights for the Contract Period. This licence shall include the right to grant sub-licenses to Sub-contractors provided that:-

- (a) the Contractor shall not without the Council's Approval use the licensed materials for any other purpose or for the benefit of any person other than the Council; and
- (b) if required by the Council, the Contractor will ensure that the Sub-contractor executes a confidentiality undertaking in favour of the Council.

X11.2 At the expiry or termination of the Contract Period the licence and any sub-licence granted in terms of Clause X11.1 shall terminate automatically on the date of such expiry or termination and the Contractor shall:-

- (a) immediately cease all use of the licensed software;
- (b) at the Council's discretion return or destroy documents and other tangible materials that contain any of the Council's software. If the Council hasn't made an election within 6 months of the termination of the licence the Contractor may destroy such documents and other tangible materials; and

- (c) ensure ,so far as reasonably practicable that any software and/or background IPR that are held in electronic, digital or other machine readable form ceases to be readily accessible from any computer or other device.

- X11.3 All Intellectual Property Rights in any Council Data or other material:-
- (a) provided/made available to the Contractor by or on behalf of the Council shall remain the property of the Council; or
 - (b) prepared by or for the Contractor on behalf of the Council for use/intended use in relation to the performance of the Contractor of its obligations under the Contract shall belong to the Council,

and the Contractor shall not, and shall ensure that its Staff shall not, except where it is necessary for the performance of the Contract, without the Council's Approval use or disclose any such Intellectual Property Rights.

X12 Complaints

- X12.1 If required in terms of the Procurement Documents the Contractor shall have an internal dispute resolution procedure for dealing with complaints from Service Users about the Contractor (and/or any of its Sub-contractors).

- X12.2 Where the Council receives a complaint about any matter connected with the performance of the Contractor's obligations under the Contract or concerning the standard of the Services provided or the manner in which any of the Services have been provided or about the materials or procedures used then the Council shall notify the Contractor and, investigate the complaint.

X13. Ethical Requirements

- X13.1 The Contractor shall perform its obligations under the Contract in such a way as to promote appropriate standards regarding legal, ethical and social issues including, for example, health and safety, security of employment rights, equality, corruption and fair trade, in particular in developing countries.

- X13.2 The Contractor shall take appropriate steps to ensure that there is no slavery or human trafficking in its supply chain and shall ensure that any Sub-contractor providing the Services on its behalf takes similar steps.

X14. Community Benefits

- X14.1 In the event of the Contractor having specified in their Tender that they will provide Community Benefits as part of the Contract the Contractor shall use their best endeavours to ensure that the Community Benefits are provided throughout the Contract Period.

- X14.2 The Council shall monitor the provision of the Community Benefits by the Contractor in terms of Clause C9 (Monitoring of Contract Performance).

X15. Environmental Requirements

- X15.1 In providing the Services the Contractor shall comply at all times with any environmental requirements detailed in the Procurement Documents or advised by the Council at any time during the Contract Period.

- X15.2 The Contractor shall satisfy themselves that no Services provided under the Contract will:-
- (a) endanger the health of any person;
 - (b) cause significant damage to the environment during manufacture, use or disposal;
 - (c) consume a disproportionate amount of energy during manufacture, use or disposal;
 - (d) cause unnecessary waste because of over packaging or because of an unusually short shelf life; or
 - (e) contain materials derived from threatened species or threatened environments.
- X15.3 The Contractor shall when providing the Services:-
- (a) consider and wherever possible address sustainability and accessing issues; and
 - (b) have regard to any sustainability, accessibility and corporate social responsibility standards and targets advised to it by the Council; and
 - (c) give due regard to environmental considerations in meeting their obligations under the Contract throughout the Contract Period, including the use of materials that are or can be recycled and materials that are proven to be environmentally safe.

X16 Fair Working Practices

- X16.1 The Contractor shall perform its obligations under the Contract in such a way as to comply, so far as required by Law, with fair working practices.
- X16.2 In the event of the Contractor having specified in their Tender that they will operate fair working practices as part of the Contract the Contractor shall ensure that the fair working practices remain in operation throughout the Contract Period.
- X16.3 The Council shall monitor the operation of the fair working practices by the Contractor in terms of Clause C9 (Monitoring of Contract Performance).
- X16.4 In the event of the Contractor failing to operate the fair working practices referred to in Clause X16.2 the Council and the Contractor shall agree a period within which the Contractor will correct this failure.
- X16.5 In the event of the Contractor continuing to fail to operate the fair working practices at the end of the period agreed between the Parties in terms of Clause X16.4 the Council reserves the right to terminate the Contract by issuing a Termination Notice to the Contractor.

X16A Fair Work First

- X16A.1 The Contractor shall perform its obligations under the Contract in such a way as to comply, so far as required by Law, with the commitment to progressing towards adoption of fair work first criteria.
- X16A.2 In the event of the Contractor having specified in their Tender that they will commit to progressing towards adoption of the fair work first criteria as part of the Contract the Contractor shall ensure that they take such actions as specified in their Tender to ensure compliance with their commitment to progressing towards the adoption of the fair work first criteria throughout the Contract Period.

X6A.3 The Council shall monitor the progress made by the Contractor in progressing towards the adoption of the fair work first criteria in terms of Clause C9 (Monitoring of Contract Performance).

X16A.4 In the event of the Contractor failing to provide evidence to support their commitment to progressing towards the adoption of the fair work first criteria referred to in Clause X16A.2 the Council and the Contractor shall agree a period within which the Contractor will correct this failure.

X16A.5 In the event of the Contractor continuing to fail to provide evidence to support their commitment to progressing towards the adoption of the fair work first criteria referred to in Clause X16A.2 at the end of the period agreed between the Parties in terms of Clause X16A.4 the Council reserves the right to terminate the Contract by issuing a Termination Notice to the Contractor.

X17 Standards

X17.1 The Contractor shall at all times comply with the Standards, the Specification and where applicable shall maintain accreditation with the relevant Standards authorisation body. To the extent that the Standards have not been specified in the Procurement Documents, and/or this Contract, the Contractor shall agree the relevant Standards with the Council prior to the provision of the Services and in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law.

X17.2 The Contractor shall comply with the Council's internal policies and procedures in force from time to time as notified to the Contractor in writing by the Council

X17.3 The Contractor shall conform to Good Industry Practice when performing its obligations under the Contract and shall not at any time do or fail to do anything which may bring the standing or reputation of the Council into disrepute or attract adverse publicity and shall have due regard to this when performing its obligations under the Contract.

X18 Third Party Rights

X18.1 A person who is not a Party to this Contract has no right under the Contracts (Third Party Rights) (Scotland) Act 2017 to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

X18.2 No third party may enforce, or take any step to enforce, any third party provision without the Approval of the Council, which may, if given, be given on and subject to such terms as the Council may determine.

X18.3 Any amendments to or modifications of this Contract may be made by the Parties without the consent of any third party.

X19. Entire Agreement

X19.1 This Contract constitutes the entire agreement between the Council and the Contractor in respect of the matters dealt with herein. The Contract supercedes all previous agreements and prior discussions, representations and undertakings made by one Party to the other, whether oral or written, except that this Clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

- X19.2 In the event of, and only to the extent of, any conflict between the Clauses of the Contract, any document referred to in those Clauses and the Schedule, the conflict shall be resolved in accordance with the following order of precedence:-
- (a) the Clauses of the Contract;
 - (b) the Schedule; and
 - (c) any other document referred to in the Clauses of the Contract.

This is the Schedule referred to in the forgoing Standard Terms and Conditions of Contract

Part 1 Definitions and interpretation

For the purposes of the Contract:-

- “Agreement”** shall mean the Data Processing Agreement or the Data Sharing Agreement, as applicable, to be entered into pursuant to this Contract between the Council and the Contractor
- “Approval”** means the prior written consent of the Council which shall not be unreasonably withheld or delayed
- “Assignee”** means any body to whom a Party to the Contract assigns, novates or otherwise disposes of or creates a trust in favour of any of its rights, obligations or liabilities under the Contract
- “Assignment”** means an agreement between the Contractor and a third party to assign, novate or otherwise dispose of or create a trust to and in favour of that third party of any of its rights, obligations or liabilities under the Contract
- “Best Value”** means the statutory duty on a local authority to secure best value as specified in Part 1 of the Local Government in Scotland Act 2003 and includes the effect of or implications of any judicial interpretation thereof, regulations made thereunder and any guidance issued by the Scottish Ministers in terms thereof

“BCDR Plan”	means the business continuity plan referred to in Clause X9 as may be amended from time to time
“Change Control Notice”	means the notice referred to in Clause C5
“Change of Control”	means the acquisition whether by purchase, transfer, renunciation or otherwise by a third party purchaser of any interest in shares in the capital of the Contractor if, upon completion of that acquisition, the third party purchaser, together with persons acting with or connected with him, would hold more than fifty percent (50%) of the voting rights attached to the issued shares in the capital of the Contractor.
“Clause”	means a clause of the Contract
“Commencement Date”	means the date advised to the Contractor by the Council (in the Letter of Award or in any other communication between the Parties) as the commencement date notwithstanding any date or dates of signature of the Contract by the Council and the Contractor
“Community Benefits”	means the economic and social benefit for residents and businesses arising as a result of the award of the Contract and the performance of the Contract
“Confidential Information”	means any information gained in the course of providing the Services or other information agreed between the Council and the Contractor in the Tender as being confidential for the purposes of the Contract.
“Contract”	means this written agreement between the Council and the Contractor consisting of these clauses, the Schedule (and any document referred to in any part of the Schedule), any written modification of the Clauses or the Schedule, the Procurement Documents, the Tender and the Letter of Award.
“Contract Period”	means the period from the Commencement Date to:- (a) the Expiry Date; or (b) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract; or (c) following an extension the date of expiry of the Extended Period
“Contract Year”	means a twelve month term during the Contract Period
“Contractor”	means the party identified in the Letter of Award with whom the Council enters into the Contract
“Controller”	shall have the meaning assigned to it by, where applicable, the Data Protection Legislation

“Council”	means South Lanarkshire Council established in terms of the Local Government etc (Scotland) Act 1994 and having their principal offices at Council Offices, Almada Street, Hamilton, ML3 0AA
“Council Data”	means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media including any Confidential Information which:- <ul style="list-style-type: none"> (i) are supplied to the Contractor by or on behalf of the Council; or (ii) the Contractor is required to generate, process, store or transmit in terms of this Contract; or(iii) any Personal Data for which the Council is the Data Controller
“Data Protection Legislation”	shall mean the UK GDPR or the DPA as applicable
“Data Subject Rights”	means the exercise of any rights of a data subject in terms of the Data Protection Legislation
“Default”	means any breach of the obligations of the relevant Party or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.
"Disclosure Scotland"	means the Disclosure Bureau empowered under Part V of the Police Act 1997 to issue criminal record certificates and enhanced criminal record certificates and based for the time being at the Scottish Criminal Record Office, Pacific Quay, Glasgow, G51 1EA
“DPA”	means the Data Protection Act 2018 and any legislation primary or secondary implementing or supplementing it together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation and any legislation primary or secondary amending it
“Due Diligence Information”	means the information the Contractor has received from the Council or which has been made available to the Contractor which the Contractor considers is necessary or relevant to the Contractor’s performance of its obligations under the Contract
“Employee Liability Information”	means the information a Contractor is required to provide in the event of a relevant transfer under TUPE
“Environmental Information Regulations”	means the Environmental Information (Scotland) Regulations 2004 and any guidance and/or codes of practice issued by the

Scottish Information Commissioner or relevant government department in relation to such legislation

- “Equipment”** means the Contractor’s equipment, plant , materials and such other items supplied and used by the Contractor (but not hired, leased or loaned from the Council) in the performance of its obligations under the Contact.
- “Exit Plan”** means the exit plan to be agreed between the Parties in terms of Clause C10
- “Expiry Date”** means the date advised to the Contractor by the Council (in the Letter of Award or in any other communication between the Parties) as the expiry date
- “Extended Period”** means the period of extension offered by the Council in terms of Clause A1.2 and accepted by the Contractor
- “FOISA”** means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such legislation
- “Force Majeure”** means any event, occurrence, circumstance, matter or cause affecting the performance by either the Council or the Contractor of its obligations arising from:
- a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the affected Party which prevent or materially delay the affected Party from performing its obligations under this Contract;
 - b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
 - c) acts of the Crown, local government or regulatory bodies;
 - d) fire, flood or any disaster; and
 - e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
 - i) any industrial dispute relating to the Contractor, the Contractor Staff (including any subsets of them) or any other failure in the Contractor or the Sub-Contractor's supply chain; and
 - ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and
 - iii) any failure of delay caused by a lack of funds
- “Force Majeure Notice”** means a written notice issued in terms of Clause E14

“Formal Warning

Notice	means a written notice issued by the Council to the Contractor in terms of Clause E3 (Termination on Default)
“Fraud”	means any offence under Law or common law creating offences in respect of fraudulent acts, fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.
“General Change In Law”	means a change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which affects or relates to comparable services
“Good Industry Practice”	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
“Guarantee”	means the Guarantee in the form contained in the Procurement Documents granted by the Guarantor in favour of the Council
“Guarantor”	means the body which has agreed to guarantee the due performance of the Contract by the Contractor in accordance with Clause D4
“Implementation Plan”	means the implementation plan prepared by the Contractor and agreed by the Council as referred to in Clause C8
“Information”	for the purposes of Clause H6 of the Contract has the meaning given under section 73 of the FOISA.
“Intellectual Property Rights (IPR)”	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database, rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
“Key Personnel”	means those persons named in the Procurement Documents and/or the Tender as being key personnel.
“Law”	means any applicable Act of Parliament, subordinate legislation, exercise of the royal prerogative, enforceable European Community right, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body with which the Contractor is bound to comply
“Letter of	

Award	means the letter issued by the Council to the successful Contractor accepting their Tender in relation to the Contract.
“Material Breach”	includes but is not limited to the situations set out in Clause E2.2 In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding
“Month”	means calendar month
“Nominated Person”	means the person appointed by each of the Parties to liaise with each other in relation to all matters connected with the performance of their obligations under the Contract or any person appointed to look after the Contractor’s affairs in terms of Clause A.2
“Party”	means a party to the Contract (and includes “Parties”)
“Persistent Breach”	means a Default which has occurred on 2 or more separate occasions within a continuous period of 3 Months
“Personal Data”	shall have the meaning assigned to it by where applicable the Data Protection Legislation
“Premises”	means the location where the Contractor provides the Services in terms of the Contract
“Price”	means the sum specified in the Letter of Award/Purchase Order payable by the Council to the Contractor in exchange for the full and proper performance by the Contractor of its obligations under the Contract subject to any modification thereof agreed between the Parties
“Price Book”	means a document or on-line provision produced and updated by the Contractor in consultation with and agreed by the Council that provides the Council with prices for the Services
“Process and Processing”	shall have the meanings assigned to them by where applicable the Data Protection Legislation
“Processor”	shall have the meanings assigned to it by where applicable the Data Protection Legislation
“Procurement Documents”	means any document produced or referred to by the Council to describe or determine elements of the procurement including the contract notice, the Specification and any additional documents issued by the Council in connection with the procurement of the Services

“Property”	means the property (other than heritable property) issued or made available to the Contractor by the Council in connection with the Contract
“Protocol”	means the Protocol entered into between the Chief Constable of Police Scotland and the Council dated 6 March 2014 as extended or substituted therefor which (1) regulates the disclosure of sensitive personal data about certain individuals by Police Scotland to the Council and the subsequent processing of that information by the Council and (ii) allows Police Scotland , in response to a request by the Council, at their discretion, to provide the Council with information regarding the suitability of organisations, their officials and Sub-Contractors to provide works or Services to the Council
“Purchase Order”	means the purchase order for Services issued by the Council to the Contractor.
“PVG Act”	means the Protection of Vulnerable Groups (Scotland) Act 2007 and any amendments thereto, all secondary legislation made thereunder and any guidance issued by the Scottish Government
“Records”	means (i) records created by or on behalf of the Council in carrying out its functions, (ii) records created by or on behalf of the Contractor in carrying out the Council’s functions or (iii) records created by any other person that have come into the possession of the Council or the Contractor in carrying out the Council’s functions
“Rectification Plan”	means the plan to be provided by the Contractor agreed in for the resolution of a Default
“Rectification Plan Process”	means the process set out in Clause X8
“Regulated Work”	has the meaning assigned in terms of Sections 91 and Schedules 2 and 3 of the PVG Act
“Regulatory Body”	means those government departments and regulatory, statutory and other entities, committees, ombudsman and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in the Contract or any other affairs of the Council and “Regulatory Bodies” shall be construed accordingly
“Relevant Transfer”	shall have the meaning assigned to it by TUPE
“Replacement Contractor”	means any third party provider appointed by the Council to provide any Services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the, termination or partial termination of the Contract.
“Request for	

Information”	means for the purposes of Clause H6 of the Contract any apparent request for information under FOISA or the Environmental Information Regulations
“Retention Period”	means the period for which particular classes of Records created or managed by the Contractor are to be retained as set out in the Retention Schedule
“Retention Schedule”	means the Retention Schedule agreed between the Parties
“Schedule”	means the Schedule in 4 parts annexed as relative to and forming part of the Contract
“Scheme”	means the Scheme established under and in terms of the PVG Act.
“Scheme Member”	means an individual who is a member of the Scheme administered by the Scottish Ministers in terms of Section 44 of the PVG Act
“Services”	means the Services to be provided by the Contractor in terms of the Contract as detailed in the Specification or Purchase Order
“Service Failure”	means a failure by the Contractor to deliver any part of the Services including in accordance with the Service Levels if applicable
“Service Levels”	means the service levels to which the Services are to be provided as set out in the Procurement Documents or the Schedule or as agreed between the Parties from time to time
“Service User”	means a person who benefits from the Services to be provided in terms of the Contract.
“SME”	means the micro, small and medium-sized enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding 50 million euro and/or an annual balance sheet total not exceeding 43 million euro
“Specification”	means the detailed description of the Services to be provided under the Contract all as more particularly described in the Procurement Documents, Part 2 of the Schedule and/or as agreed between the Parties
Specific Change In Law”	means a change in Law that relates specifically to the business of the Council and which would not affect comparable services
“Staff”	means all persons employed or appointed by the Contractor to perform its obligations under the Contract together with the Contractor’s agents, suppliers and Sub-contractors used in the performance of its obligations under the Contract
“Standards”	means unless otherwise specified in the Procurement Documents the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International

Organisation for Standardisation or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with and any other applicable quality standards, Government codes of practice and guidance.

- “Sub-contract”** means any contract or agreement or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide the Services or any part thereof to the Contractor
- “Sub-contractor”** means any third party with whom the Contractor or its agents enters into a Sub-contract
- “Subject Access Request”** means a request for information made in terms of section 7 of the DPA
- “Tender”** means the document(s) submitted by the Contractor to the Council in response to the Procurement Documents.
- “Termination Event”** means any one or more of the following:-
conspiracy;
corruption;
bribery;
Fraud;
fraudulent evasion;
common law offence of uttering;
common law offence of attempting to pervert the course of justice;
an offence under section 41 or Schedule 2 of the Counter Terrorism Act 2008;
money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002;
an offence in connection with the proceeds of criminal conduct within the meaning of sections 93A, 93B or 93C of the Criminal Justice Act, 1988;
an offence under Part 1 or the Schedule of the Human Trafficking and Exploitation (Scotland) Act 2015;
an offence in connection with the proceeds of drug trafficking within the meaning of sections 49, 50 or 51 of the Drug Trafficking Act 1994;
any other offence within the meaning of Article 57(1) of Directive 2014/24/EU;
breach of the obligation on the Contractor relating to the payment of taxes or social security contributions;
an offence under the Employment Relations Act 1999 (Blacklists) Regulations 2010;
a Material Breach in terms of Clause E2
- “Termination Notice”** means a notice issued by one of the Parties to the other Party terminating the Contract
- “TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended

- “UK GDPR”** has the meaning assigned to it by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019
- “VAT”** means value added tax in accordance with the provisions of the Value Added Tax Act 1994
- “Working Day”** means any day excluding Saturday and Sunday and statutory holidays as fixed by the Council.

Interpretation

The interpretation and construction of this Contract shall be subject to the following provisions:-

- (a) References to any statute, law, order, regulation or other similar instrument shall be construed as a reference to the statute, law, order, regulation or instrument as subsequently amended or re-enacted
- (b) References to the singular include the plural and vice versa and references to male include female unless the context otherwise requires;
- (c) Clause headings and sub headings are for reference purposes only and shall not affect the construction of anything in the Contract. Reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
- (d) Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees and
- (e) The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”

The provisions of the Interpretation Act 1978 with respect to interpretation and construction shall apply mutatis mutandis.

Part 2 Service Requirements

The Contractor will provide the Services to the Council throughout the Contract Period in accordance with the Specification/Purchase Order and as set out below:-

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Part 3 Price

1. The Contractor shall submit all invoices in accordance with the Council’s e-invoicing process at the intervals agreed between the Parties. Invoices will be submitted to the email address advised to the Contractor by the Council, will be in searchable pdf format and will contain the following information:-
 - (a) invoice number;
 - (b) invoice/credit note identifiers;
 - (c) Council Purchase Order number;
 - (d) invoice period;
 - (e) Contractor’s name and address
 - (f) Contractor’s VAT registration number, if applicable;
 - (g) delivery details;

- (h) description of the Services provided which must match the description on the Council's Purchase Order;
 - (i) product number for each invoiced line, if applicable;
 - (j) invoice line item information (net at line level);
 - (k) invoice line item information (net total of invoice);
 - (l) invoice total (gross); and
 - (m) VAT breakdown, if applicable
2. The Council will check the accuracy of any invoice received and shall raise any queries with the Contractor promptly upon receipt of the invoice, failing which the invoice will be deemed to be accurate. The Contractor will respond promptly to any queries raised by the Council.
3. The Council shall, in addition to the Price and following receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services provided in accordance with the Contract.
4. Unless otherwise stated in the Contract payment shall be made within 30 calendar days of receipt and agreement of invoices. Payment shall be made by BACS transfer into a suitable bank account or by other electronic payment methods as appropriate unless otherwise agreed between the Parties.
5. The Contractor shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Council at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this paragraph 5 shall be paid by the Contractor to the Council not less than 5 Working Days before the date upon which the tax or other liability is payable by the Council.
6. Where the Council disputes an invoice or any part thereof, the Parties shall follow the process outlined below to verify whether disputed sums are due in terms of this Contract:
- (a) The Contractor will issue a fresh invoice for the undisputed elements to the Council for payment in terms of paragraph 1;
 - (b) The Contractor will issue a fresh invoice in respect of the disputed elements;
 - (c) The Council will raise any queries in respect of the invoice issued in terms of paragraph 6(b) with the Contractor within fifteen (15) Working Days of receipt;
 - (d) The Contractor will respond to queries raised by the Council within ten (10) Working Days of their receipt.
 - (e) If the Council is satisfied with the response given by the Contractor the Council will proceed to pay the invoice within thirty (30) calendar days of receipt of the response under paragraph 6(d).
 - (f) If the Council is not satisfied with the response given by the Contractor, the matter will be referred for determination by the Nominated Person within five (5) Working Days of receipt of the response under paragraph 6(d)
 - (g) The Nominated Persons for both Parties will use their reasonable endeavours to reach an amicable and workable solution on the issues in dispute, within ten (10) Working Days of the matter being referred to them, failing which the matter will be referred to dispute resolution in terms of Clause G1 (Dispute Resolution) within five (5) Working Days,

- and the timescales set out in Clause G1 (Dispute Resolution) will apply.
- (h) Where the Nominated Persons agree a resolution this will be final and binding on the Parties.
 - (i) The Parties will comply with the determination issued by the Nominated Persons; or where the matter has been referred to dispute resolution in terms of Clause G1 (Dispute Resolution) the Parties will comply with the determination issued in terms of that process as follows:-
 - (i) Where the determination requires the Council to pay all of the disputed sums, the Council shall pay these sums within thirty (30) calendar days of the date of the determination.
 - (ii) Where the determination requires the Council to pay only part of the disputed sums, the Contractor shall raise a credit note in favour of the Council for the sums found not due to the Contractor within ten (10) Working Days of the determination, and the Council will pay the balance due on the invoice on receipt of the credit note.
7. The Contractor shall not suspend the provision of the Services unless the Contractor is entitled to terminate the Contract under Clause E3 (Termination on failure to pay).
8. Interest shall be payable by the Council on the late payment of any undisputed sums of money properly claimed in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended.
9. Without prejudice to paragraph 5 for the avoidance of doubt it shall at all times remain the sole responsibility of the Contractor to:-
 - (a) assess the VAT rates and tax liability arising out of or in connection with the Contract: and
 - (b) account for or pay any VAT (or any other tax liability) relating to payments made to the Contractor under the Contract to HMRC.
10. The Council shall not be liable to the Contractor in any way whatsoever for any error or failure made by the Contractor (or the Council) in relation to VAT.
11. Where the Contractor enters into a Sub-contract with a Sub-contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such Sub-contract which:-
 - (a) requires payment to be made of all sums due by the Contractor to the Sub-contractor within a specified period not exceeding 30 calendar days from the receipt of a valid invoice and
 - (b) provides that, for the purpose of payment alone, where the Council has made payment to the Contractor and the Subcontractor's invoice includes Services in relation to which payment has been made by the Council then, to the extent that it relates to such Services, the Sub-contractor's invoice shall be treated as valid and payment shall be made by the Contractor to the Subcontractor without deduction.
12. Where the provision of a Price Book is required in terms of the Procurement Documents, the Contractor shall supply the Council with a Price Book at the Commencement Date for use the Council on a regular basis throughout the Contract Period. In addition a duly revised Price Book will be supplied by the Contractor to the Council immediately after a modification of the Price and/or the Specification takes effect.

13. The Council is an end user for the purposes of S55A of the VAT Act 1994 reverse charge for building and construction services.

Part 4 Performance Monitoring

1. The Contractor shall comply with the performance monitoring requirements set out in the Procurement Documents and as set out below:-

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2. In addition the Contractor will provide annual reports to the Council throughout the Contract Period and upon the expiry/termination of the Contract on the :-
 - (i) overall SME spend under the Contract and
 - (ii) South Lanarkshire based SME spend under the Contract.

If you need this information in a different format or language, please contact us to discuss how we can best meet your needs. Phone: 0303 123 1015 Email: equalities@southlanarkshire.gov.uk