



**Clackmannanshire
Council**

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**Clackmannanshire Council
Standard Terms and Conditions
Supply of Services
(Non Construction and Non Consultancy)**

Guidance Note to Users

Clackmannanshire Council
Standard Terms and Conditions
Supply of Services

These terms and conditions shall govern the relationship between the Council and the Supplier, and no other terms and conditions shall be accepted.

The selected terms and conditions will form the basis of any written signed contract between us, and will take precedence over any other conditions that you may propose.

No variation, replacement, alternative or substitute terms and conditions shall apply to the contract unless such terms are subscribed by the Clackmannanshire Council Procurement Manager.

This will be in accordance with section 3 of the Requirements of Writing (Scotland) Act 1995 and any attempt by the supplier to impose any alternative conditions (including the imposition of any clause superseding or constituting an entire agreement clause) shall be null and void and shall not be binding on the Council.

1. Definitions

In these terms and conditions, unless otherwise stated, the following terms shall have the following meanings:

"Award Letter" means the formal acceptance letter signed by the proper officer of the Council accepting the Tender by the Supplier;

"Commencement Date" means the date specified in the Award Letter, failing which, the date falling 2 weeks after the Date of the Award letter issued by the Council to the Supplier, or such other date as the Council and the Supplier may agree in writing;

"Community Benefit Provision" means, without prejudice to the generality, the provision of paid or unpaid work placements, modern or vocational apprenticeships or training and educational training to persons within the local government area of the Council;

"Completion Date" means the date for completion of the Services by the Supplier, which date shall be set out in the Specification and/or Invitation to Tender, or failing which, set out in the Award Letter (which date may be extended by the agreement of the Council and the Supplier), or where the Services are to be provided for the duration of the Contract, the Termination Date;

"Contract" means these terms and conditions and any supplementary conditions set out in the Invitation to Tender;

"Contract Notice" means the contract notice in respect of the proposed works published by the Council on the Public Contracts Scotland Portal;

"Council" means Clackmannanshire Council, a local authority constituted under section 2 of the Local Government etc (Scotland) Act 1994 and having its principal offices at Council Offices, Kilncraigs, Greenside Street, Alloa, FK10 1EB;

"Disclosure" means a criminal record certificate or enhanced criminal record certificate issued by Disclosure Scotland under Part V of the Police Act 1997

"Disclosure Scotland" means the agency of the Scottish Government that discharges the functions of Scottish Ministers under the Police Act 1997 and in particular provides Disclosures and manages the issue of information under the PVG Act

"Interest Rate" means a rate of 2% above the official dealing rate of the Bank of England current at the date that a payment due under this Contract becomes overdue;

"Invitation to Tender" means the invitation to tender either (i) sent out by the Council to the Supplier (and such other candidates) or (ii) downloaded from the Public Contracts Scotland Portal and completed by the Supplier, and in each case such invitation which includes the Specification;

"Procurement Regulations" means the Public Contracts (Scotland) Regulations 2015 - applied to Council contracts whose value is equal to or above the EC Procurement Threshold, Procurement Reform (Scotland) Act 2014 and the Procurement (Scotland) Regulations 2016 and any other legislation governing or regulating the purchase of goods, supplies and services by local authorities constituted under the Local Government etc (Scotland) Act 1994;

"Public Contracts Scotland Portal" means the national advertising portal maintained by the Scottish Government on behalf of (amongst others) the Council;

"Public Holiday" means Christmas Day, Good Friday, a day which under the Banking and Financial Dealings Act 1971 is a Bank Holiday in Scotland and any week day being a local holiday which the principal offices of the Council are closed for business to the public;

"Purchase Order" means the purchase order referred to and enclosed with the Award Letter (which sum specified therein represents the Council's maximum expenditure under the Contract and is not a guarantee of any orders for the Services);

"PVG Act" means the Protection of Vulnerable Groups (Scotland) Act 2007

"Regulated Work" means regulated work as defined in Section 91 of the PVG Act

"Services" means the services set out in the Specification and the Invitation to Tender;

"Specification" means the written description of the services to be supplied by the Supplier under the Contract as set out in the Invitation to Tender;

"Supplier" means the Supplier selected by the Council following a response to the Invitation to Tender advertised by a Contract Notice in the Public Contracts Scotland Portal and being the entity set out in the Invitation to Tender and as identified in the Award Letter;

"Tender" means the formal offer to carry out the services by the Supplier to the Council in accordance with the requirements set out in the Invitation to Tender (and including any derogations as approved in accordance with clause 7.2);

"Termination Date" means the date falling 4 years after the Commencement Date, or such earlier date as is specified in terms of the Contract;

2. The Services

- 2.1 The Supplier shall supply the Services to the Council from the Commencement Date until the Completion Date. The Services shall be performed to the requirements set out in the Specification and shall be performed with the reasonable skill and care that would be expected of a competent professional professing to have knowledge in the area of expertise to which the Services relate.
- 2.2 The Council has made the Supplier aware of the Council's requirements in the Invitation to Tender, and the Council is relying on the skill, care and judgement of the Supplier in supplying the Services.
- 2.3 Notwithstanding the terms of clauses 2.1 and 2.2, the Supplier in supplying the Services shall comply with:
 - (a) all relevant Legislation;
 - (b) all applicable statutory consents;
 - (c) the applicable provisions of this Contract; and
 - (d) Good Industry Practice

3. The Price

- 3.1 The price payable by the Council shall be the price set out in the Suppliers Tender, as adjusted where necessary by the Award Letter (and where applicable the Purchase Order) and shall be payable in accordance with clauses 3.2 and 3.2A below. No increases in the price shall be permissible except in accordance with this Contract.

The price submitted by the Supplier shall include all fees costs and expenses (including travel) and no additional allowance shall be payable by the Council in this respect (except where otherwise specified in the Invitation to Tender). Where the Contract Notice, Specification and/or Invitation to Tender specify that the Contract is made on a call off or as required basis, the Supplier expressly acknowledges that there is no guarantee of any orders for the Services being instructed by the Council.

- 3.2 The Supplier shall invoice the Council on or after the Services have been delivered to the Council in accordance with clause 4.1 (subject to the provisions of clause 4.2), setting out the price for the Services as set out in the Tender. All invoices must quote the Purchase Order number. The Council reserves the right to reject or withhold payment where the Supplier fails to comply with the terms of this clause.
- 3.2A Where the Services are of an ongoing nature and it is expressly set out in the Invitation to Tender, the Supplier shall be entitled to invoice the Council on the interim basis as set out in the Invitation to Tender, or failing which at intervals that may be agreed between the Council and the Supplier. At no time shall the Supplier be entitled to payment in advance under this Contract.
- 3.3 Where the Supplier is VAT registered, the invoice must comply with the requirements of the Value Added Tax Act 1994 or such other legislation that may be enacted in relation to input tax from time to time..
- 3.4 Where the Council has specified within the Invitation to Tender that they can place multiple orders for the Services with the Supplier under this Contract, the terms of the Contract shall apply mutatis mutandis to each order placed with the Supplier, and the terms of the Contract shall be construed accordingly.
- 3.5 The Contractor shall be required to provide a minimum of twenty eight (28) days written notice of any proposed increase in price and shall be required to submit documentary evidence to support any proposed increase to the satisfaction of the Council's Procurement Manager.

The proposed increase shall not be applied until the Council is satisfied as to the validity of such increase and the Council shall have the right to call for any further information required to enable substantiation of such increase. The Council shall only be obliged to consider any proposed increase if it arises from a general rise in the market in the cost of raw materials or the cost of delivery due to circumstances outwith the contractor's control and which were not reasonably foreseeable at the time of the Tender Response.

If the proposed increase is deemed by the Council to be uncompetitive/unacceptable the Council may remove the Article,

Goods, Material or related Service to which the increase is to be applied from the Contract and source such Article, Goods, Material or related Service from another supplier/contractor

4. Delivery and Performance

- 4.1 The Services shall be delivered to or performed at the place specified within the Specification, or failing which the Award Letter. If neither is specified, the Services shall be delivered to or performed at such address and at such intervals as is specified in writing by the Council to the Supplier.
- 4.2 If requested by the Council, or required by the terms of the Invitation to Tender, the Supplier shall be entitled to attend and inspect the premises where the Services are to be delivered. The Supplier shall be deemed to have been satisfied in relation to all matters regarding the delivery of the Service at the premises and in accordance with the Specification.
- 4.3 The time of performance of the Services shall be of the essence and failure to perform the Services by the Completion Date (or where the Services are of a continuing nature, failure to perform the Services), or any milestone dates set out in this Contract shall amount to a material breach of contract. Such failure shall entitle the Council to terminate the contract without compensation (or payment or acceptance of the Services being required) being payable to the Supplier, and such right is without prejudice to any other such remedy as the Council may have under this Contract.
- 4.4 Subject always to the terms of clause 5, the Supplier may not subcontract its interests and/or obligations under the Contract to any other person without the prior consent in writing of the Council which consent shall not be unreasonably withheld. Such consent shall not be required where the Supplier has stated their intention to subcontract part or all of the Contract in the Tender.
- 4.5 Where there is agreement to sub-contract any part of the performance of the Suppliers obligations, the Supplier shall be responsible for the acts and/or omissions of their sub-contractors as though they were their own and shall ensure that the terms of the Contract are reflected mutatis mutandis to any sub contractor.
- 4.6 Subject to the provisions of clause 4.7, neither party may assign its interests and/or obligations under the Contract to any other person without the prior consent in writing of the other party, which consent shall not be unreasonably withheld.
- 4.7 The Council shall be free to assign its interests and/or obligations under the Contract without the consent of the Supplier to any other local authority constituted in terms of the Local Government etc

(Scotland) Act 1994, providing that the Council gives the Supplier not less than 7 days written notice of its intention to do so.

- 4.8 The Supplier represents and warrants to the Council that the Supplier has satisfied himself that all necessary tests, inspections and examinations have been made or will be made prior to the performance of the Services to ensure that the Services are so as to be performed safely and without risk to the health or safety of persons using the same, and that the Supplier has made available to the Council adequate information about the use for which the Services have been designed (or will be performed) and have been tested and about any conditions necessary to ensure that when put to use the Services will be safe and without risk to health.
- 4.9 With prejudice to the generality of clause 4.8 hereof, the Supplier shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this clause 4.8.

4A. Health & Safety

- 4A.1 The Supplier operates appropriate health and safety policies and must perform the contract in accordance with all current health and safety legislation. If requested by the Council, the Supplier provides the Council with a copy of his current health and safety policy statement.
- 4A.2 The Council must be notified immediately by the Supplier of any risks to health or safety which are identified or arise during the performance of the Contract.
- 4A.3 While on the Council's premises, the Supplier shall comply at all times with any health and safety measures implemented by the Council in respect of the premises and notifies the Council immediately of any incident occurring while the Supplier is on the premises which causes or is likely to cause any personal injury or damage to property.
- 4A.4 If work is to be carried out at the Council's premises, the Council will notify the Supplier of any health and safety hazards which may exist or arise at the premises and which may affect the Supplier in the performance of his duties under this contract.

5. Suppliers Personnel

- 5.1 Where it stated within the Specification and/or Invitation to Tender, or the Supplier has stated within their Tender that a particular individual or individuals will perform the Services, the Supplier shall be expressly prohibited from delivering the Services utilising any

other individual, save with the consent of the Council (such consent which the Council may give at its absolute discretion).

- 5.2 Failure to make available the personnel in accordance with clause 5.1 shall constitute a material breach of the Contract and shall entitle the Council to terminate the Contract on giving immediate written notice to the Supplier. Notwithstanding this clause 5.2, the Supplier may propose another suitably qualified person or persons to deliver the Service, although acceptance of such proposed alternate is entirely at the discretion of the Council.
- 5.3 Prior to commencement of the Services, and if and when instructed by the Council, the Supplier shall give to the Council a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require.
- 5.4 The decision of the Council as to whether any person is to be admitted to or is to be removed from the any premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Supplier has furnished the information or taken the steps required of him by this clause shall be final and conclusive.
- 5.5 The Supplier shall bear the cost of any notice, instruction or decision of the Council under this Clause, with such cost being a debt payable on immediate written demand by the Council to the Supplier.

5A. No Agency

- 5A.1 In carrying out the Services the Supplier shall be acting as a principal on their own account and at no times as the agent of the Council. Accordingly:
- (a) Except where as expressly authorised in writing by the Council's proper officer set out in clause 7, the Supplier shall not (and shall procure that any person to whom they are legally responsible for) say or do anything that might lead any third party to believe that the Supplier is acting as the agent of the Council, and
 - (b) Nothing in this Contract shall impose any liability on the Council in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of the Council to the Supplier that may arise by virtue of either a breach of this Contract or any negligence on the part of the Council or any person that the Council is legally responsible for.

5B. Free Issue Materials

- 5B. Where the Council for the purpose of the Contract issues materials free of charge to the Supplier such materials shall be and remain the property of the Council. The Supplier shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Supplier shall notify the Council of any surplus materials remaining after completion of the Services and shall dispose of them as the Council may direct. Waste of such materials arising from bad workmanship or negligence of the Supplier or any person whom the Supplier is legally responsible for shall be made good at the Supplier's expense. Without prejudice to any other of the rights of the Council, the Supplier shall deliver up such materials whether processed or not to the Council on demand.

6. Licences and Copyright

- 6.1 The copyright in all drawings, reports, specifications, bills of quantities, calculations and other documents, data and information prepared or used by or on behalf of the Supplier in connection with the Contract for delivery to the Council of the Services remains vested in the Supplier, but the Council shall have an irrevocable, perpetual, royalty free, non-exclusive licence to copy and use such drawings and other documents, data and information for any purpose related to the Services, including without prejudice to the foregoing generality, contract administration and the supervision, maintenance, repair, renewal or alteration of any parts of the Services. This clause shall survive the completion or termination of the Contract.
- 6.2 The Supplier agrees to waive any right to be identified as author of material provided by the Supplier in accordance with Section 77 of the Copyright Designs and Patent Acts 1988 and any right not to have material provided by the Supplier subjected to derogatory treatment in accordance with Section 80 of that Act as against the Council or any licensee or assignee of the Council.

7. Variations - Contract Terms

- 7.1 No variations to these contract terms shall be accepted by the Council except where the variation procedure detailed in this clause 7 has been complied with.
- 7.2 Any request for variations or alterations to these terms and conditions must be sent in writing to (i) the Governance Manager, Council Offices,

Kilncraigs, Greenside Street, Alloa, FK10 1EB; (ii) by enclosing a Schedule of Derogations with the Tender; or (iii) by email to: procurement@clacks.gov.uk. Providing that the supplier provides a copy of the proposed variation(s) or replacement terms, the Governance Manager will consider any such request and will advise the Supplier accordingly.

- 7.3 No variation, replacement, alternative or substitute terms and conditions shall apply to the contract unless such terms are subscribed by the Governance Manager and in accordance with section 3 of the Requirements of Writing (Scotland) Act 1995 and any attempt by the Supplier to impose any alternative conditions (including the imposition of any clause superseding or constituting an entire agreement clause) shall be null and void and shall not be binding on the Council.

8. Variations - Specification

- 8.1 The Council shall be entitled to add or remove additional Services from the scope of the Contract.
- 8.2 Where the Services are priced within the Tender, the additional Services shall be supplied at no greater cost than is specified for such item(s) in the Suppliers Tender. Where the Services to be supplied are reduced in number or duration then the applicable deduction shall be made from the final price payable (either by agreement or failing which on a pro-rata basis).
- 8.3 Where the additional Services requested by the Council be are not described in the Specification, but are ancillary to the requirements of the Specification, the Council may issue a request for quotation for such additional Services to the Supplier.
- 8.4 The Supplier shall within 14 days (or such other period as may be agreed) provide the quotation for the additional Services. The Council may either accept the quotation or determine not to proceed with the order for the additional Services.
- 8.5 Where the Council accepts the quotation, the additional Services shall be provided to the Council by the Supplier in accordance with the Contract. If the Council rejects the quotation, no compensation shall be payable to the Supplier.
- 8.6 The Council shall not be required to make payment for any additional Services supplied in accordance with clauses 8.3 to clauses 8.5, except where (i) this clause has been complied with by the Supplier or (ii) the Council and the Supplier have complied with the terms of clause 8.7 and 8.8 below.
- 8.7 If it is agreed between the parties, or exceptional and unforeseen circumstances require additional Services to be purchased on a Time

Charge basis, then payment is made based on the actual staff time spent rounded to the nearest 0.25 hours. The Time Charge does not include normal travel time to and from the place where the Supplier's staff are based for the contract. If travel time to and from the place where the Supplier's staff are to be based for the contract is exceptional, the Supplier and the Council agree in advance whether any exceptional travel time is included in the Time Charge. It is the Supplier's responsibility to identify and raise any exceptional travel time and expenses in advance with the Council, failing which the Council is not liable to reimburse any additional time .

8.8 The Supplier must provide a detailed breakdown for any staff doing work on a Time Charge basis on a weekly basis. Each timesheet must include as a minimum:

- staff name and designation;
- task or project, and associated activities worked on,
- date(s) on which the work was undertaken,
- number of hours spent on the task or project, to the nearest 0.25 of an hour, and
- details of travel time and expenses for authorised journeys (subject to the terms of clause 8.7).

9. Termination of the Contract

9.1 Without prejudice to any other rights or remedies of the Council under the Contract the Council shall have the right forthwith to terminate the Contract by written notice to the Supplier or the appropriate trustee in bankruptcy or sequestration, receiver, liquidator or administrator:

(a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Supplier, or he is apparently insolvent, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator or trustee is appointed to manage his affairs; or

(b) where the Supplier is not an individual but is a firm or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or

- (c) where the Supplier is a company, if the company passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by a solvent amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.
- 9.2 The Council may terminate the Contract where the Supplier is in material breach of any of the terms of this Contract. Where such a term is not specified as such, the Council may by immediate written notice notify the Supplier that they are in material breach of Contract, and give the Supplier a period of not less than 14 days (or such longer period as the Council may determine) to rectify the material breaches set out in the notice.
- 9.3 The Council shall be entitled by notice to the Supplier to terminate the Contract, any other contract with the Council if, in relation to this or any other such contract, the Supplier or any person employed by him, or acting on his behalf shall have:
- (i) Committed an offence under the Bribery Act 2010; or
 - (ii) Shall have given any fee or reward the receipt of which is an offence under section 66 of the Local Government (Scotland) Act 1973 or any re-enactment thereof; or
 - (iii) Committed any breach of the Employment Relations 1999 Act (Blacklists Regulations) 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992; or
 - (iv) Committed any breach of the Data Protection Act 2018 by unlawful processing of personal data in connection with any blacklisting activities described at (iii) above.
- 9.4 In the event that the Council receives notification by an economic operator (within the meaning of the Procurement Regulations) that they intend to challenge the award of this Contract by the Council to the Supplier, the Council may on giving immediate written notice to the Supplier, either (i) suspend the operation of the Contract; or (ii) terminate the Contract in its entirety.
- 9.5 In the event of termination or suspension pursuant to this section 9.4, no compensation, damages or other monetary payment shall be due by the Council to the Supplier.
- 9.6 The right of the Council to terminate or suspend the Contract in accordance with sections 9.4 and 9.5 shall expire on the date

occurring 4 months from the publication by the Council of a contract award notice in the Public Contracts Scotland Portal.

- 9.7 In the event that the Council does not exercise its rights under clauses 9.1 to 9.6, this Contract (subject to the any of the parties accrued rights herein) shall terminate on the Termination Date.
- 9.8 On or before the Termination Date, the Supplier shall (if requested) return all documents and other information supplied by the Council in relation to this Contract (unless the Council requires the Supplier to destroy or securely dispose of such documents).

9A. Insurance and Indemnity

- 9A.1 Without prejudice to any rights or remedies of the Council under the Contract, the Supplier shall indemnify the Council, its officers, employees, agents and other contractors against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the Supplier.
- 9A.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Supplier (in respect of which the indemnity in clause 9A.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Council, its officers, employees, agents and other contractors.) the indemnity contained in clause 9A.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Council or its officers, employees, agents or other contractors.
- 9A.3 The Supplier shall have in force and shall require any sub-contractor to have in force:
- (a) Employer's liability insurance in accordance with any legal requirements for the time being in force;
 - (b) Public liability insurance for such sum and range of cover as the Supplier deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under this Contract in the sum of not less than £5 million for any one incident and unlimited in total, unless otherwise agreed by the Council in writing; and
 - (c) where stated in the Invitation to Tender, the Specification or by the Council, the requisite level of professional indemnity insurance and/or medical malpractice insurance as may be required by the Council.

9.4 The policy or policies of insurance referred to in clause 9A.3 shall be shown to the Council whenever he requests, together with satisfactory evidence of payment of premiums.

10. Governing Law and Jurisdiction

10.1 This Contract shall be considered as a contract made in Scotland and shall be subject to the Laws of Scotland.

10.2 The Supplier and the Council agree that the courts of Scotland shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Contract and irrevocably submit to the jurisdiction of those courts.

11. Notices

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery and if so sent to the address of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours, or in the case of the Council, in accordance with the relevant provisions of the Local Government (Scotland) Act 1973. All notices to be served on the Council must be served on the Governance Manager, Clackmannanshire Council, Kilncraigs, Greenside Street, Alloa, FK10 1EB

12. Severability

If any provision of this Contract shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Contract.

13. Third Party Rights

Save to the extent expressly provided in this Contract and, to avoid doubt, without prejudice to the rights of any permitted successor to the rights of the Supplier or of any permitted assignee, it is expressly declared that no rights shall be conferred under and arising out of this Contract upon any person other than the Council and the Supplier and without prejudice to the generality of the foregoing, there shall not be created by this Contract a *jus quaesitum tertio* in favour of any person whatsoever.

14. Limitation of Liability

- 14.1 Nothing in this Contract shall exclude or limit liability of the Council or the Supplier in respect of any death or personal injury to any party caused by the negligence of that party.
- 14.2 in respect of any sanctions or fines imposed due to the breach or breaches of the Data Protection Act 2018 by the Information Commissioners Office (including those set out in clause 9(3)(iv)), £500,000 on an each and every occurrence basis;
- 14.3 in respect of any losses, damage or destruction caused by the default of the Supplier under this Agreement (including for the avoidance of any doubt, professional negligence or medical malpractice) for which there is a requirement to have such a policy of insurance in place, the sum specified in clause 9A.3(a), (b) or (c), the Specification, Invitation to Tender or such other document which states the requisite insurance level; or
- 14.4 in respect of any losses, damage or destruction caused by the default of the Council under this Agreement for which the Council is required by law to have in place a policy of insurance, the sum of £1million pounds sterling (or such higher sum that (i) the Council may notify in writing to the Supplier, or (ii) is required to hold by law); or
- 14.5 Except in respect of any claims under the indemnities set out in clause 18 of the Contract, in respect of any other losses howsoever arising as a result of that party's breach of contract, the total amount payable under the Contract. Where the Contract is a call off arrangement, then such sum shall be limited to the value of any orders placed with the Supplier under the Contract.
- 14.6 Notwithstanding the above provisions, nothing in this clause shall allow for the Supplier to claim for any special or indirect, consequential or indirect losses, loss of profit, turnover, additional business or damage to goodwill.
- 14.7 Nothing in this clause 14 shall affect the parties general duty to mitigate any losses incurred.

14A. Protection of Vulnerable Groups

- 14A.1 The Supplier ensures throughout the duration of the contract that any person employed by him or acting on his behalf is suitable to provide the Services given the nature of any third parties with whom there may be some contact in the normal performance of the contract. The Council may instruct the Supplier to remove from premises any individual employed by the Supplier or acting on his behalf where the Council deems the individual not to be suitable and on receipt of such instruction the Supplier will remove such individual from premises forthwith.

14A.2 Where services are Regulated Work the Supplier and any person employed by him or acting on his behalf ensures compliance with all of the relevant requirements of the PVG Act, including the establishment of and adherence to effective procedures in respect of the Supplier and any person employed by him or acting on his behalf.

14A.3 Where services require the Supplier or any person employed by him or acting on his behalf to have been Disclosure checked then the Supplier shall, obtain the appropriate level of Disclosure directly from Disclosure Scotland.

14B. Audit

The Supplier keeps and maintains until seven (7) years after the Termination Date, or as long a period of retention as may be set out in the Specification, full and accurate records of the contract including the services supplied under it, all expenditure reimbursed by the Council and all payments made by the Council. The Supplier, on request, affords the Council or the Council's representatives such access to those records as may be requested by the Council in connection with the contract.

15. Freedom of Information & Data Protection

15.1 Where the Supplier processes (or will process) or controls (or will control) personal data it hereby confirms that it has (or will acquire) a valid notification with the Information Commissioner as defined by section 6 of the Data Protection Act 2018 covering its processing of personal data, including in that notification the disclosure of personal data to the Council. This requirement shall not apply if the Supplier is, by virtue of the Data Protection (Notification and Notification Fees) Regulations 2000, exempt from the requirement to notify.

15.2 The Supplier hereby warrants:

- (i) that the processing and/or controlling of any information will be subject to technical and organisational security measures of a sort, which if the Supplier were the data controller in respect of the Resident Information, would satisfy the Seventh Data Protection Principle;
- (ii) that it will take reasonable steps to ensure compliance with the measures described in Clause 15.2(i) above;
- (iii) that it will process the Resident Information only in accordance with instructions from the Council and the terms of the Contract; and
- (iv) that it will comply with all obligations imposed by the Seventh Data Protection Principle as though the Supplier were the data controller in respect of the Resident Information.

- 15.3 In the Contract the expressions “personal data”, “data controller”, “data processor”, “processing” and “process” shall have the meanings assigned to them by the Data Protection Act 2018, and the “Seventh Data Protection Principle” shall mean the Seventh Principle set out in Part 1 of Schedule 1 to that Act.
- 15.4 The Supplier shall not be required to pass any information to the Council if in doing so would cause the Supplier to breach the terms of the Data Protection Act 2018. The Supplier must supply detailed reasons in terms of the said Act in support of such an assertion within a reasonable timescale specified by the Council.
- 15.5 the Supplier shall be prohibited from undertaking any secondary processing or from passing to any third party or utilising any storage medium or processing outside the bounds of the United Kingdom, without the express written consent of the Council.
- 15.6 At the end of the Contract, the obligations contained in this clause 15 shall continue in full force and effect (notwithstanding the event of earlier termination of the Contract in accordance with its terms) until all personal data that has been passed to the Supplier by the Council as part of the Contract has been destroyed.
- 15.7 The Supplier shall indemnify the Council in respect of any claims, losses, fines, damages or other such liability howsoever arising in respect of the Suppliers breach of this clause 15.
- 15.8 The Supplier acknowledges the Council's obligations under the Freedom of Information (Scotland) Act 2002 ("the 2002 Act") and acknowledges in particular that the Council may be required to provide information relating to the Contract or the Supplier to any person on request in order to comply with the 2002 Act. The Council will presume the information submitted by the Supplier to the Council is not commercially sensitive unless specifically drawn to the Council's attention. The Council must act in accordance with the 2002 Act but in deciding whether to release any information in response to a request for information shall where practicable take into account any opinion of the Supplier as regards commercial confidentiality and, in particular, any reasons given to support such exemption
- 15.9 Where the Council seeks to consult the Supplier in connection with a request for information made under the 2002 Act the Supplier will facilitate the Council's compliance with the 2002 Act by consulting timeously with the Council.
- 15.10 The Supplier shall keep secret and not disclose (and shall procure that his employees, agents, sub-contractors or any party that the Supplier is legally responsible for, keep secret and not disclose) any information of a confidential nature obtained by the Supplier by reason of the Contract, except information which is in the public domain otherwise than by reason of a breach of this Clause.

16. Unlawful Discrimination

- 16.1 The Supplier shall not discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation contrary to the Equality Act 2010 (the “Act”).
- 16.2 The Supplier shall monitor its own staff and sub-contractors and provide such information on request to the Council. The Supplier shall provide such information as the Council requires about its policies and practices concerning the prevention of unlawful discrimination and the promotion of equality and diversity and equality both in terms of employment and customer service. The Council and the Supplier shall continue to monitor the performance and objectives of the Contract throughout the duration of the Contract and to make any amendments or changes necessary to the Contract or its performance or objectives in order further to promote equality.
- 16.3 The Supplier shall notify the Council immediately in writing as soon as it becomes aware of any investigation or proceedings brought against the Supplier under the Act.
- 16.4 Where any investigation is undertaken by a person or body empowered to conduct such an investigation and/or proceedings are instituted following such an investigation against the Supplier or against the Council either in connection with the performance of the Contract or otherwise, the Supplier shall at its own expense:
- i) provide any information requested in the timescale allotted;
 - ii) attend any meetings as required and permit its staff and sub-contractors to attend any meetings as required;
 - iii) promptly allow access to and investigation of any documents or data deemed to be relevant to the investigation;
 - iv) allow itself and any of its Staff and sub-contractors to appear as witnesses in any proceedings; and
 - v) co-operate fully and promptly with the person or body conducting the investigation during the course of the investigation.
- 16.5 Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Supplier, its Staff or sub-contractors and where there is a finding against the Supplier in any such investigation or proceedings, the Supplier shall, without prejudice to indemnify the Council with respect proceedings, costs, expenses (including legal and administrative expenses), liabilities, injury, loss or damages arising from or incurred by the Council during or in connection with any such investigation or proceedings and further indemnify the Council for any compensation, loss or damages, costs, expenses (including legal and administrative

expenses) or other award the Council may be ordered or required to pay to a third party.

- 16.6 If a finding of unlawful discrimination or breach of equality and diversity legislation is made against the Supplier or against the Council arising from the conduct of the Supplier, the Supplier shall take such immediate remedial steps, as the Council may reasonably require, to prevent any further unlawful discrimination or breaches of equality and diversity legislation.
- 16.7 If the Supplier enters into any sub-contract in connection with this Contract, the Supplier shall impose obligations on its sub-contractors terms which are identical to those imposed on it in this clause 16. The Council expects that the Supplier will not subcontract to any business, service or group which has a poor history of discrimination in employment or service delivery.
- 16.8 In recognition of the Council's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies under the Act, the Council may from time to time require the Supplier complete a questionnaire and/or provide information to the Council on the extent and quality of the Supplier's equalities and diversity policies and practice.

17. Entire Agreement

Except where expressly provided otherwise in this Contract, this Contract constitutes the entire agreement between the Council and the Supplier in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

18. Transfer of Undertaking

- 18.1 In the event that the Services are put out to tender by the Council in furtherance of their obligations under the Procurement Regulations, the Supplier shall co-operate with the Council and any Replacement Contractor in ensuring the smooth handover of the Services.
- 18.2 The Supplier shall at any time during the Transfer Assistance Period:
 - 18.2.1 on receiving a request from any Council promptly provide, subject to legal obligations regarding data protection and confidentiality, in respect of any persons wholly or mainly engaged or employed by the Supplier in the provision of the Services (the **Assigned Employees**) full and accurate details regarding the number, job title, grade, salary and benefits relating or payable to the Assigned Employees together with such other information relating to the Assigned Employees which is in the possession of the Supplier or which can

reasonably be obtained by the Supplier from any third party as may reasonably be required by such Council or any prospective Replacement Contractor (the **Re-tendering Information**); and

- 18.2.2 notify the Council in writing of any material changes to the Re-tendering Information promptly as and when such changes arise.
- 18.3 The Supplier undertakes that in the Transfer Assistance Period it shall not without the prior written consent of the Council:
 - 18.3.1 materially vary the terms and conditions of any of the Assigned Employees (including without limitation remuneration, benefits and other perquisites and collective agreements which relate to the employment of such employees); or
 - 18.3.2 increase the number of Assigned Employees; or
 - 18.3.3 replace any of the Assigned Employees, save where the Supplier replaces any such individuals with individuals of substantially equivalent employees in relation to grade and remuneration.
- 18.4 The Supplier shall during the Service Period maintain personnel records in the format normally adopted regarding the service of each of the Assigned Employees including all personnel records required to be maintained by law and deliver the records of relating to any Assigned Employee to the Council or the Replacement Contractor on the Transfer Date.
- 18.5 The Parties acknowledge that by virtue of the cessation or partial cessation of the provision of the Services by the Supplier the contracts of employment of each Transferring Employee may have effect after such cessation as if originally entered into between a Replacement Contractor or the Council and each Transferring Employee pursuant to the TUPE Regulations but the Parties agree that the provisions of Clauses 18.6 to 18.9 inclusive shall apply irrespective of whether or not the TUPE Regulations do apply.
- 18.6 All remuneration of any kind due to the Transferring Employees during the period of this Agreement applicable to them shall be paid or settled in full by the Supplier in each case no later than the date such remuneration is due to be paid.
- 18.7 At the earlier of (i) a contract notice being published by the Council in respect of the provision of the Services (or part thereof) or (ii) 21 days prior to any prospective Transfer Date the Supplier will supply to the Council or the Replacement Contractor (as the case may be) information regarding the identity, age, sex, length of service, job title,

holiday entitlement, workplace, and terms and conditions of employment affecting each of the Assigned Employees at that time and the Supplier will update the Council or the Replacement Contractor (as the case may be) in respect of any changes to the information supplied by it pursuant to this condition in a timely fashion throughout the period between the information being provided and the applicable Transfer Date.

18.8 The Supplier shall indemnify the Council and/or any Replacement Contractor (as the case may be) against all Employment Liabilities which it incurs in connection with or as a result of:

(a) any claim by any of the Transferring Employees (or any person who would have been a Transferring Employee but for their dismissal prior to the Transfer Date) arising out of their employment with the Supplier or the termination thereof, providing that such liabilities arise from any act or omission prior to the Transfer Date and this shall not include any such liabilities which arise from any act or omission of such Council or any Replacement Contractor (as the case may be); or

(b) any misrepresentation or mis-statement, whether negligent or otherwise, made by the Supplier to the Transferring Employees or their representatives before the Transfer Date and whether liability for any such claim arises before, on or after the Transfer Date.

18.9 The Supplier acknowledges and agrees that the Councils may grant an indemnity in favour of any Replacement Contractor to the same extent that the Supplier is undertaking to indemnify that Council in terms of this Clause 18 or that the Council may assign such indemnity to any Replacement Contractor and agrees that in the event of a claim on any indemnity in terms of this Clause 18 for loss incurred by the Council, that loss shall include the amount, if any, which the Council has paid or is required to pay to any Replacement Contractor by virtue of any indemnity granted by that Council in its favour in accordance with the provisions of this Clause 18.9.

18.10 In the event that the Supplier fails to provide any of the Re-tendering Information requested by any of the Councils during the Transfer Assistance Period, then the Councils shall be entitled to withhold up to a maximum of 10% of the overall contract price (as set out in clause 3.1 and the Suppliers Tender) for the Services from the Supplier without penalty until such time as the Supplier provides the Re-tendering Information.

18.11 Without prejudice to the obligations under clause 18.7, the Supplier shall be under an obligation to provide the information detailed within clause 18.7 to the Council within 28 days of the Supplier executing this Agreement.

18.12 In this clause 18, the following words have the following meanings:

"Employment Liabilities" means any and all costs, claims, liabilities and expenses (including legal expenses) relating to or arising out of the employment of the relevant employees (or termination thereof) including, without prejudice to the foregoing generality, negligence claims by any such employee or third party, and claims for unfair dismissal, redundancy, unlawful discrimination, breach of contract, claims in relation to provision entitlement, unlawful deduction of wages, breach of the TUPE Regulations and equal pay.

"Replacement Contractor" means any third party service provider appointed by the Council from time to time, 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 this Agreement.

"Transfer Assistance Period" means in relation to the Supplier and the Council (i) the period of six months immediately preceding the expiry of the Agreement or (ii) following notice of termination of this Agreement;

"Transfer Date" means the date on which any cessation or partial cessation of the Services takes effect so as to transfer the contracts of employment of the Transferring Employees by virtue of the TUPE Regulations.

"Transferring Employees" means those employees who immediately prior to the expiry or earlier termination (or partial termination) of this Agreement are wholly or mainly engaged or employed in the provision of the Services (or the terminating part thereof).

"TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

18A. Waiver

18A.1 Any relaxation, forbearance, indulgence or delay (together "indulgence") of any party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether against that party or any other person).

18A.2 Notwithstanding any breach of this Contract by either party, and without prejudice to any other rights which the party may have in relation to it, the other party may elect to continue to treat this Contract as being in full force and effect and to enforce its rights under this Contract. The failure of any party to exercise any right under this

Contract, including any right to terminate this Contract and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.

19. Set Off and Retention of Sums Due

- 19.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under the Contract or under any other agreement or contract with the Council or with any department, agency or authority of the Council.
- 19.2 Without prejudice to the terms of clause 19.1 above, where the Supplier has offered within the Tender to provide Community Benefit Provision to the Council (pursuant to the Council's statutory powers under the Local Government in Scotland Act 2003), the Supplier shall be obliged to deliver the Community Benefit Provision in accordance with the Tender and any further requirements of the Council and at no cost to the Council as more particularly specified in the Specification and Invitation to Tender.
- 19.3 In the event that the Supplier fails to provide the Community Benefit Provision in accordance with clause 19, the Council reserves the right, on giving the Supplier not less than 7 days written notice, to either (i) provide the Community Benefit Provision directly; or (ii) employ others to carry out the Community Benefit Provision.
- 19.4 The Supplier shall be liable for all additional costs incurred by the Council in connection with such employment and such costs may be withheld or deducted by the Council from any monies due or to become due to the Supplier under this Contract or shall be recoverable from the Supplier as a debt.

20. Payment

- 20.1 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt of and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Purchaser.
- 20.2 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

21. Business continuity

- 21.1 The Provider shall put in place and maintain a robust strategy and process for maintaining business continuity throughout the duration of the Contract. Such a strategy shall include a risk management

register to identify any such risks and ensure timely and appropriate actions to manage reduce, mitigate or avoid any risks to business continuity. This will be shared with the council on request.

21.2 Such strategy shall include but not be limited to:-

- i. ensuring continuity of staffing
- ii. ensuring continuity of service delivery
- iii. ensuring processes for safe storage and retrieval of all business information

21.3 Any additional costs associated with the management of business continuity shall be the sole responsibility of the Provider.