



**Clackmannanshire
Council**

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Comhairle Siorrachd
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Clackmannanshire Council

Standard Terms and Conditions

Supply of Services

(Non-Construction and Non-Consultancy)



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Clackmannanshire Council Standard Terms and Conditions for the Supply of Services

1. Definitions

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

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| Award Letter | means the formal acceptance letter signed by the proper officer of the Council accepting the Tender submitted by the Supplier; |
| Commencement Date | means the date specified in the Award Letter or such other date as the Council and the Supplier may agree in writing; |
| Community Benefit Provision | means, without prejudice to the generality, provisions which are intended to improve the economic, social and/or environmental wellbeing within the local government area of the Council as per the Procurement Reform (Scotland) Act 2014, including but not limited to the provision of paid or unpaid work placements, modern or vocational apprenticeships or training, educational training or sub-contracting opportunities; |
| 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, or where the Services are to be provided for the duration on a call off basis, the earlier of (i) the date specified in each specific order or (ii) the expiry or termination of the Term; |
| Confidential Information | means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with the Contract, including but not limited to: <ul style="list-style-type: none">(a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;(b) any information developed by the parties in the course of carrying out the Contract; and(c) any commercially sensitive information; |
| Contract | means the agreement concluded between the Council and the Supplier for delivery of the Services, including but not limited to: these conditions, the Invitation to Tender, the Tender and the Award Letter; |
| Contract Notice | means any notice that may be published on the Public Contracts Scotland Portal by the Council advertising the Council's procurement requirements relevant to the Services; |



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| Contract Standing Orders | means the Council's rules for the procurement of goods, works and services (available at https://www.clacks.gov.uk/business/contractstandingorders/) and as updated from time to time; |
| Contract Year | means (a) a period of twelve (12) months commencing on the Commencement Date; or (b) thereafter a period of twelve (12) months commencing on each anniversary of the Commencement Date; provided that the final Contract Year shall end on the expiry or termination of the Term; |
| 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; |
| Data Protection Legislation | means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; |
| Disclosure Scotland | means the agency of the Scottish Government that discharges the functions of the Scottish Ministers under the Police Act 1997 and in particular provides Disclosures and manages the issue of information under the PVG Act; |
| EISR | means the Environmental Information (Scotland) Regulations 2004 together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such regulations; |
| FOISA | means the Freedom of Information (Scotland) Act 2002 together with any guidance or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such legislation; |
| Force Majeure Event | means any circumstance not within a party's reasonable control including, without limitation: <ul style="list-style-type: none">(a) acts of God, flood, drought, earthquake or other natural disaster;(b) epidemic or pandemic;(c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;(d) nuclear, chemical or biological contamination or sonic boom;(e) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;(f) collapse of buildings, fire, explosion or accident;(g) but excluding any labour or trade dispute, strikes, industrial action or lockouts relating to the Supplier or |



the Supplier's personnel or any other failure in the Supplier's or a sub-contractor's supply chain;

Good Industry Practice means standards, practices, methods and procedures conforming to legal and regulatory requirements 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 as the Supplier under the same or similar circumstances;

Intellectual Property Rights means patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Insolvency Event means circumstances in which:

- (a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of that other party;
- (c) the Supplier applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company, limited liability partnership or partnership);
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company, partnership or limited liability partnership);



- (f) the holder of a qualifying floating charge over the assets of the Supplier (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (h) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive);
- (j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

Invitation to Tender means the invitation to tender either (i) sent 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 includes any Specification;

Law means the laws of Scotland and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Supplier is bound to comply with for the duration of the Contract;

Mandatory Policies the Council policies stated in the Invitation to Tender, the Single Procurement Document and/or as may be provided by the Council to the Supplier from time to time;

Necessary Consents means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents (whether statutory, regulatory, contractual or otherwise) necessary from time to time for the provision of the Services;

Premises means the location where the Services are to be performed as specified in the Contract;

Procurement Law means the Public Contracts (Scotland) Regulations 2015, the Procurement Reform (Scotland) Act 2014 and/or 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;

Prohibited Act means the following:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage as an inducement or reward for any improper performance of a relevant function or activity;



- (b) to directly or indirectly request, agree to receive or accept 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;
- (c) committing any offence: (i) under the Bribery Act 2010; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the Council;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK;

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| Public Contracts Scotland Portal | means the national advertising portal maintained by the Scottish Government on behalf of (amongst others) the Council; |
| Purchase Order | means the purchase order referred to and enclosed with the Award Letter; |
| 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; |
| Relevant Requirements | all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued pursuant to section 9 of the Bribery Act 2010; |
| Relevant Transfer | a relevant transfer for the purposes of TUPE; |
| Representatives | means, in relation to a party, its employees, officers, contractors, permitted subcontractors, representatives and advisors; |
| Services | means the Services to be supplied by the Supplier pursuant to the Contract, as set out in the Specification; |
| Single Procurement Document | means the standard questionnaire issued by the Council and completed by the Supplier containing questions on both exclusion and selection criteria; |
| Specification | means the written description of the Services to be provided by the Supplier under the Contract as set out in the Invitation to Tender; |
| Supplier | means the supplier selected by the Council to perform the Services and as identified in the Award Letter; |
| Tender | means the formal offer submitted by the Supplier to the Council to carry out the Services in accordance with the requirements set out in the Invitation to Tender; |
| TUPE | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended; |
| UK GDPR | means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection |



Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018;

UNCRC means the United Nations Convention on the Rights of the Child;

Working Day means any day in which (i) the banks in Glasgow and Edinburgh and (ii) the principal offices of the Council are open for business to the public; and

Working Hours means the period from 9.00am to 5.00pm on any Working Day.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of the Contract.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract includes the schedules.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless expressly provided otherwise in the Contract, a reference to legislation or a legislative provision is a reference to it as amended, extended, re-enacted or replaced and includes any subordinate legislation made under it, in each case from time to time.
- 1.7 A reference to writing or written excludes fax but not e-mail.
- 1.8 Any obligation in the Contract on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.9 A reference to the Contract or to any other agreement or document (including the Mandatory Policies) is a reference to the Contract or such other agreement or document as varied from time to time.
- 1.10 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.11 Where there is any conflict or inconsistency between the provisions of the Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Supplier has notified the Council in writing.



2. Commencement and duration

- 2.1 The Contract shall take effect on the Commencement Date and, subject to clause 2.2 and clause 22, shall continue until the Completion Date (the “**Term**”).
- 2.2 The Term may be extended by the written agreement of the Council and the Supplier, provided that such extension is permissible in terms of any applicable Procurement Law.

3. Services

- 3.1 The Supplier shall supply the Services to the Council for the duration of the Term.
- 3.2 The Services shall be delivered to or performed at the place specified within the Specification or, failing which, the Award Letter. If no location 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.
- 3.3 The Supplier is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of any services or works which he is required to perform, supply or install under the Contract and is deemed to be satisfied in relation to all matters connected therewith. The Council shall, at the request of the Supplier, grant such access as may be reasonable for this purpose.
- 3.4 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 the Specification shall amount to a material breach of contract. Such failure shall entitle the Council to terminate the contract in line with clause 22.1 without compensation (including payment for or acceptance of the Services being required) to the Supplier.
- 3.5 In providing the Services, the Supplier shall at all times (and to the Council’s reliance):
- (a) provide the Services in accordance with the provisions of the Contract (including in particular the requirements set out in the Specification);
 - (b) provide the Services with the reasonable care and skill that would be expected of a competent professional professing to have knowledge in the area of expertise to which the Services relate, and in accordance with Good Industry Practice;
 - (c) ensure that all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
 - (d) obtain, maintain and comply with all Necessary Consents at its own cost (unless otherwise agreed in writing with the Council);



- (e) allocate sufficient resources to provide the Services in accordance with the terms of the Contract;
- (f) provide the Council with such reports on the Services at such intervals and in such form as the Council may reasonably require from time to time;
- (g) ensure that any personnel engaged by the Supplier in the provision of any of the Services are appropriately experienced, qualified and trained;
- (h) ensure that any of the Supplier's personnel who are engaged in the provision of any of the Services shall, if required by the Council, attend such meetings at the premises of the Council or elsewhere as may be reasonably required by the Council; and
- (i) provide such reasonable co-operation and information in relation to the Services to such of the Council's other suppliers as the Council may reasonably require for the purposes of enabling any such person to create and maintain any interfaces reasonably required by the Council.

4. Charges, invoicing and payment

- 4.1 Provided the Supplier has satisfied its obligations in terms of the Contract, the Council shall pay the price set out in the Award Letter for the Services, as adjusted where necessary by the Award Letter, clause 21 and, where applicable, the Purchase Order (the "**Price**"). No increases in prices shall be permissible except in accordance with the Contract.
- 4.2 Subject to clauses 4.8 to 4.10, the Price:
- (a) shall remain fixed during the Term; and
 - (b) is the entire price payable by the Council to the Supplier in respect of the Services and includes, without limitation, any royalties, consents, insurance costs, costs associated with health and safety compliance, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Supplier personnel.
- 4.3 Claims by the Supplier for additional costs at a later stage will not be considered.
- 4.4 The Supplier shall invoice the Council monthly in arrears for Services delivered. All invoices must quote the Purchase Order number, and VAT (where applicable) shall be shown separately as a strictly net extra charge.
- 4.5 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 an interim basis as set out in the Invitation to Tender, or failing which, at intervals that may be agreed in writing between the Council and the Supplier. At no time shall the Supplier be entitled to payment in advance under the Contract.



- 4.6 Unless otherwise stated in the Contract, the Council shall pay the Supplier any charges due under any invoice properly submitted to it by the Supplier within 30 days.
- 4.7 The Council may at any time, set off any liability of the Supplier to the Council against any liability of the Council to the Supplier, irrespective of whether liability is present or future, liquidated or unliquidated, and whether or not liability arises under the Contract. Any exercise by the Council of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
- 4.8 With reference to clause 4.2 and subject to clause 4.9, in exceptional circumstances, the Council may consider a proposed increase to the Price provided this is a permissible modification in terms of any applicable Procurement Law. Where the Council is in agreement, the Supplier shall be required to provide a minimum of twenty-eight (28) days written notice of any such proposed increase to the Price, and shall be required to submit documentary evidence to support any proposed increase to the satisfaction of the Council's Procurement Manager.
- 4.9 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 beyond the Supplier's control and which were not reasonably foreseeable at the time of the Tender submission.
- 4.10 If the proposed increase is deemed by the Council to be uncompetitive/unacceptable, the Council may, at its election, remove the relevant Service to which the increase is to be applied from the Contract or terminate the Contract in its entirety. In each case, the Council shall be able to source the affected Services from another supplier.
- 4.11 Except as otherwise provided in the Contract, the parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under the Contract.
- 4.12 The payment of the Price by the Council shall not be interpreted as meaning that the Council is satisfied with the Services provided under the Contract.
- 4.13 Where the Contract Notice, Specification and/or Invitation to Tender specifies 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.
- 4.14 Where the Supplier is VAT registered, the invoice must comply with the requirements of the Value Added Tax Act 1994 or such legislation that may be enacted in relation to input tax from time to time.
- 4.15 Where the Council has specified within the Invitation to Tender that it can place multiple orders for the Services with the Supplier under the 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.

- 4.16 The Council reserves the right to reject or withhold payment where the Supplier fails to comply with the terms of this clause 4 (without any compensation being payable by the Council).

5. Supplier's personnel

- 5.1 Where it is stated within the Specification and/or Invitation to Tender, or the Supplier has stated within its Tender that a particular individual or particular individuals will perform the Services, it shall be considered a material breach for the purposes of the Contract for the Supplier to deliver the Services utilising any other individual.
- 5.2 Notwithstanding clause 5.1, 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, subject to Data Protection Legislation, give to the Council a list of names and contact details 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 Council may, acting reasonably and by notice to the Supplier refuse to admit onto, or withdraw permission for the Supplier's Representative to remain on the Council's Premises.
- 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.
- 5.6 The Council shall have the power at any time during the progress of the Services to order in writing: (a) the removal from the Premises of any materials which in the opinion of the Council are either hazardous, noxious or not in accordance with the Contract, and/or (b) the substitution of proper and suitable materials, and/or (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefor of any work which, in respect of material or workmanship is not in the opinion of the Council in accordance with the Contract and the Supplier shall forthwith comply with any order made.
- 5.7 On completion of the Services the Supplier shall remove the Supplier's plant, equipment and unused materials and shall clear away from the Premises all rubbish



arising out of the provision of the Services and leave the Premises in a neat and tidy condition.

- 5.8 All decisions of the Council as to whether the Supplier has furnished the information or taken the steps required by this clause 5, are final and conclusive.

6. Free issue materials

- 6.1 Where the Council, for the purpose of the contract, issues materials free of charge to the Supplier ("**Free Materials**"), such Free Materials shall be and shall remain the property of the Council.
- 6.2 The Supplier shall maintain all Free Materials in good order and condition and shall use such Free Materials solely in connection with the Contract.
- 6.3 The Supplier shall notify the Council of any surplus Free Materials remaining after completion of the Services and shall dispose of them as the Council may direct.
- 6.4 Waste of Free 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 Free Materials whether processed or not to the Council on demand.

7. Intellectual property

- 7.1 All Intellectual Property Rights in any guidance, reports, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, design or other material whether in writing, electronic format or any other media furnished to or made available to the Supplier by or on behalf of the Council shall remain the property of the Council.
- 7.2 The Supplier irrevocably assigns to the Council, with full title guarantee and free from all third party rights, the Intellectual Property Rights in any guidance, reports, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, design or other material whether in writing, electronic format or any other media prepared by or for the Supplier for exclusive use or intended use in relation to the performance of the Contract and in all other cases the Supplier grants to the Council a perpetual, royalty free, irrevocable, non-exclusive licence to use the said Intellectual Property Rights including but not limited to the right to copy, adapt, publish and distribute both internally and externally and the Supplier shall execute all documentation necessary to give effect to this condition within 14 days of receiving such a request from the Council.
- 7.3 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.

7.4 The Supplier shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Rights by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

7.5 This clause 7 shall survive the expiry or termination of the Contract.

8. Insurance

8.1 The Supplier shall at its own cost effect and maintain with reputable insurance companies insurance policies to cover its liabilities under the Contract and, as a minimum the types of policies and levels of cover specified in the Invitation to Tender and/or the Single Procurement Document (the "Required Insurances").

8.2 The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

8.3 The Supplier shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

8.4 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

8.5 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.

8.6 The Supplier shall hold and maintain the Required Insurances for a minimum of five years following expiry or earlier termination of the agreement.

9. Compliance and change in laws

9.1 In performing its obligations under the Contract, the Supplier shall at all times comply with:



- (a) all applicable Law;
 - (b) the Council's Contract Standing Orders if acting as agent and on behalf of the Council; and
 - (c) the Mandatory Policies.
- 9.2 The Supplier shall maintain such records as are necessary pursuant to the Law and Mandatory Policies and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Council (or its authorised representative).
- 9.3 Without limiting the generality of the obligation under clause 9.1, the Supplier shall (and shall procure that its personnel shall) perform its obligations under the Contract (including those in relation to the Services) in accordance with:
 - (a) all applicable Law regarding health and safety; and
 - (b) any health and safety measures implemented by the Council in respect of its premises.
- 9.4 The Provider shall have and implement appropriate health and safety policies. If requested by the Council, the Supplier shall provide the Council with a copy of its current health and safety policy statement.
- 9.5 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 will 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 any conditions necessary to ensure that when put to use the Services will be safe and without risk to health.
- 9.6 The Supplier shall notify the Council immediately of any health and safety incidents or material health and safety hazards of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Supplier shall instruct its personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 9.7 Without limiting the general obligation set out in clause 9.1, the Supplier shall (and shall procure that its personnel shall):
 - (a) perform its obligations under the Contract (including those in relation to the Services) in accordance with:
 - (i) all applicable equality law (whether in relation to race, sex, gender reassignment, marriage and civil partnership, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);



- (ii) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality Law;
 - (b) take all necessary steps (including under applicable equality Law), and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or any successor organisation;
 - (c) notify the Council immediately in writing as soon as it becomes aware of any investigation or proceedings brought against the Supplier or its personnel under any applicable equality law;
 - (d) act in accordance with relevant UNCRC requirements.
- 9.8 If a finding of unlawful discrimination or breach of equality and diversity legislation is made against the Supplier, against the Supplier's personnel or against the Council arising from the conduct of the Supplier or its personnel, 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 and to mitigate the impact of such breach.
- 9.9 In recognition of the Council's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies under the Equality Act 2010, 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.
- 9.10 The Supplier shall monitor and shall keep the Council informed in writing of any changes in the Law which may impact the Services and shall provide the Council with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes.
- 9.11 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms of the Contract nor be entitled to an increase in the Price as the result of a general change in Law.
- 9.12 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 9.
- 10. Freedom of Information**
- 10.1 The Supplier acknowledges that the Council is subject to the requirements of the FOISA and the EISRs. The Supplier shall:



- (a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOISA and EISRs;
 - (b) transfer to the Council all requests for information relating to the Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Council with a copy of all information belonging to the Council requested in the request for information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such information; and
 - (d) not respond directly to a request for information unless authorised in writing to do so by the Council.
- 10.2 The Supplier acknowledges that the Council may be required under the FOISA and EISRs to disclose information (including commercially sensitive information) without consulting or obtaining consent from the Supplier. The Council will presume that the information submitted by the Supplier to the Council is not commercially sensitive unless specifically drawn to the Council's attention. The Council shall take reasonable steps to notify the Supplier of a request for information to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Contract) the Council shall be responsible for determining in its absolute discretion whether any commercially sensitive information or any other information is exempt from disclosure in accordance with the FOISA or the EISRs.
- 10.3 Notwithstanding any other term of the Contract, the Supplier consents to the publication of the Contract in its entirety (including variations), subject only to the redaction of information that the Council considers is exempt from disclosure in accordance with the provisions of the FOISA and EISRs.

11. Protection of Vulnerable Groups

- 11.1 The Supplier shall ensure throughout the Term that any person employed by it or acting on its 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.
- 11.2 The Council may exercise its general right under clause 5.4 to instruct the Supplier to remove from Premises any individual employed by the Supplier or acting on its behalf where the Council deems the individual not to be suitable and on receipt of such instruction the Supplier will remove such individual from the Premises.
- 11.3 To the extent that the Services involve Regulated Work, the Supplier and any person employed by it or acting on its behalf shall ensure compliance with all of the relevant requirements of the PVG Act as same may be updated, amended or replaced by the



Disclosure (Scotland) Act 2020, including ensuring that the Supplier and all individuals who will carry out Regulated Work are appropriately vetted in accordance with the requirements of the PVG Act, and are Scheme Members (as defined in the PVG Act) for that type, or those types, of Regulated Work and that the Supplier has established and shall adhere to effective procedures in respect of the Supplier and any person employed by him or acting on his behalf.

- 11.4 Where Services require the Supplier or any person employed by him or acting on his behalf to have been Disclosure checked as same may be updated, amended or replaced by the Disclosure (Scotland) Act 2020, then the Supplier shall (at its own cost) obtain the appropriate level of Disclosure directly from Disclosure Scotland.
- 11.5 The Supplier shall notify the Council immediately on receipt from Disclosure Scotland and/or the Scottish Ministers of a notification of any matter which may have an adverse effect on the Supplier's suitability to carry out Regulated Work and will confirm that action has been or will be taken following thereon.
- 11.6 If the Council receives notification from the Supplier in terms of clause 11.5 or receives notification directly from Disclosure Scotland and/or the Scottish Ministers, the Council will consider the terms of the notification received and in the event of the Council not being satisfied with the Supplier's suitability for continued provision of the Services will use reasonable endeavours to confirm its reasons for holding this view within 5 Working Days of receipt of the notification.
- 11.7 If the Supplier disagrees with the Council's assessment, the Supplier shall notify the Council of the reasons why it disagrees with this view, and the matter will be reviewed by a Council official to be notified in writing to the Supplier, whose decision shall be final and binding on the Parties.
- 11.8 The Supplier shall not deliver the Services under the Contract pending the outcome of the review referred to at 11.7, and the Council shall have no liability whatsoever to the Supplier in this regard.
- 11.9 The Supplier's compliance with the terms of this Clause 11 shall be monitored in terms of clause 17 hereof.
- 11.10 If the Supplier fails to comply with its obligations under this clause 11, the Council shall be entitled to regard this as a material breach in terms of clause 22.

12. Data Protection

- 12.1 The parties agree that the provisions of Schedule 1 shall apply to the processing of Personal Data under the Contract.



13. Confidentiality

- 13.1 The provisions of this clause do not apply to any Confidential Information which:
- (a) is or becomes available to the public (other than as a result of its disclosure by the receiving party or its representatives in breach of this clause);
 - (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - (c) was, is, or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
 - (d) the parties agree in writing is not confidential or may be disclosed.
- 13.2 Each party shall keep the other party's Confidential Information secret and confidential and shall not:
- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with the Contract (the "**Permitted Purpose**"); or
 - (b) disclose such Confidential information in whole or in part to any third party, except as expressly permitted by this clause 13.
- 13.3 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure;
 - (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to the Contract; and
 - (c) at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 13.
- 13.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law (including, disclosures which are permitted under the FOISA or EISRs), by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.
- 13.5 The provisions of this clause 13 shall survive expiry or termination of the Contract.



14. Indemnities

- 14.1 Subject to clause 14.2, the Supplier shall indemnify and keep indemnified the Council, its officers, employees, agents and other contractors against all liabilities, costs, expenses (including legal and administrative), damages, compensation and losses incurred by the Council arising out of or in connection with:
- (a) the Supplier's breach or negligent performance or non-performance of the Contract;
 - (b) any claim made against the Council arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier or its personnel; and
 - (c) the enforcement of the Contract.
- 14.2 The indemnity under clause 14.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Council are directly caused (or directly arise) from the negligence or breach of the Contract by the Council.

15. Limitation of liability

- 15.1 Subject to clause 15.5, the Council's total liability under the Contract shall be capped at the lower of (i) the amount payable by the Council to the Supplier under the Contract in the Contract Year in respect of which the claim arises and (ii) the sum of £1,000,000.
- 15.2 Subject to the remainder of this clause 15, the Supplier's total aggregate liability to the Council:
- (a) in respect of any losses, damage or destruction caused by the default of the Supplier under this Contract for which there is an insurance policy in place, the requisite insurance level; and
 - (b) in respect of all other claims, losses or damages, the total amount payable by the Council to the Supplier under this Contract.
- 15.3 Nothing in this clause 15 shall limit the Supplier's liability under:
- (a) clause 7 (Intellectual property);
 - (b) clause 9 (Compliance and change in Laws);
 - (c) clause 12 (Data Protection)/ Schedule 1 (Data Protection);
 - (d) clause 14 (Indemnities);
 - (e) clause 19 (TUPE)/ Schedule 2 (TUPE on exit); and
 - (f) clause 33 (Prevention of bribery).



- 15.4 Notwithstanding the above provisions, nothing in this clause shall allow for the Supplier to claim for any consequential or indirect losses, loss of profit, loss of turnover, loss of anticipated savings, loss of business or damage to goodwill.
- 15.5 Nothing in the Contract limits any liability which cannot legally be limited, including for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation and
 - (c) any liability to the extent it cannot be limited or excluded by Law.
- 15.6 Nothing in this clause 15 shall affect the parties' general duty to mitigate any losses incurred.

16. Audit

- 16.1 The Supplier shall keep and maintain for seven (7) years following the Term, or earlier termination, 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.
- 16.2 The Supplier shall, on request, afford the Council or the Council's representatives such access to those records as may be requested by the Council in connection with the Contract.
- 16.3 If an audit identifies that:
- (a) the Council has overpaid any charges, the Supplier shall pay to the Council the amount overpaid within 15 Working Days from the date of receipt of an invoice or notice to do so. The Council may deduct the relevant amount from the Price if the Supplier fails to make this payment; and
 - (b) the Council has underpaid any charges, the Council shall pay to the Supplier the amount of the underpayment within 30 Working Days from the date of receipt of an invoice for such amount.

17. Monitoring and review

- 17.1 The Supplier shall provide to the Council such information as may reasonably be requested by them from time to time in connection with the Contract, including, but not limited to, management information and performance monitoring data.
- 17.2 If requested by the Council, the Council and the Supplier shall meet to discuss and review the progression of the Contract to identify:-
- (a) any failure in performance or unsatisfactory performance;
 - (b) practical ways of resolving any difficulties encountered in carrying out the Contract;



- (c) any ways of improving the Services; and
 - (d) any issues arising in the completion of the Contract.
- 17.3 The Supplier shall attend all meetings in connection with the Contract to which they may be invited and will advise and assist the Council at such meetings on all matters relating to the Contract which lie within the scope of the obligations which the Supplier has assumed under the Contract.
- 17.4 At all times after the commencement of the Contract, any officer nominated by the Council may organise regular and thorough inspections of the Supplier's performance to ensure that it is complying with its obligations in terms of the Contract. Any such inspection may be undertaken in whatever way the Council considers appropriate, provided adequate notice is provided to the Supplier.
- 18. Records management**
- 18.1 The Supplier shall provide the Council with all assistance reasonably requested by the Council to assist the Council in complying with its obligations under the Public Records (Scotland) Act 2011 where such compliance is in respect of records created or to be created by the Supplier on behalf of the Council in terms of the Contract. This assistance will be at no cost to the Council.
- 19. TUPE**
- 19.1 The parties agree that the provisions of Schedule 2 shall apply to any Relevant Transfer of staff under the Contract.
- 20. Variation – contract terms**
- 20.1 No variation to the Contract shall be effective unless it is in writing and signed by the parties in accordance with section 3 of the Requirements of Writing (Scotland) Act 1995.
- 20.2 Any request by the Supplier for variations or alterations to the Contract must be sent in writing to:
- (a) the Governance Manager, Council Offices, Kilncraigs, Greenside Street, Alloa, FK10 1EB; **and**
 - (b) the Procurement Manager, Council Offices, Kilncraigs, Greenside Street, Alloa, FK10 1EB **and**
 - (c) by email to the address detailed in the Tender.



21. Variation – services

- 21.1 The Council shall be entitled to add or remove Services from the scope of the Contract provided that such addition or removal of Services is permissible in terms of any applicable Procurement Law.
- 21.2 Where proposed additional Services are priced within the Tender, the additional Services shall be provided at no greater cost than is specified for such item(s) in the Tender. Where the Services to be provided 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), and with no additional or other compensation being payable by the Council.
- 21.3 Where the additional services requested by the Council 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.
- 21.4 The Supplier shall within 14 Working 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.
- 21.5 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.
- 21.6 The Council shall not be required to make payment for any additional Services supplied 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 21.7 and clause 21.8 below.
- 21.7 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 shall be made based on the actual staff time spent, rounded to the nearest 0.25 hours (the “**Time Charge**”). 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 shall 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.
- 21.8 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:
- (a) staff name and designation;
 - (b) task or project, and associated activities worked on,



- (c) date(s) on which the work was undertaken,
- (d) number of hours spent on the task or project, to the nearest 0.25 of an hour, and
- (e) details of travel time and expenses for authorised journeys (subject to the terms of clause 21.7).

22. Termination

22.1 Without affecting any other right or remedy available to it, the Council may terminate the Contract with immediate effect by giving written notice to the Supplier if one or more of the following circumstances occurs or exists:

- (a) if the Supplier is in material breach of the Contract, where such material breach is remediable and the Supplier fails to remedy the material breach within 14 Working Days of the Council giving the Supplier notice of such breach (or such longer period as the Council may determine);
- (b) if the Supplier is in material breach of the Contract, where such material breach is irremediable;
- (c) if there is an Insolvency Event;
- (d) if the Supplier has carried out a Prohibited Act;
- (e) if there is a change of control of the Supplier to which the Council reasonably objects;
- (f) the Supplier has 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;
- (g) the Supplier has committed any breach of the Data Protection Legislation by unlawful processing of personal data in connection with any blacklisting activities described above;
- (h) the Council reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts (Scotland) Regulations 2015 apply.

22.2 The Council shall be entitled to terminate the Contract on giving the Provider not less than 14 days' written notice to this effect, without any liability to the Provider.

22.3 In the event that the Council receives notification by an economic operator (within the meaning of the Public Contracts (Scotland) Regulations 2015) that they intend to challenge the award of the 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. In the event of such suspension or termination, no compensation, damages or other monetary payment shall be due by the Council to the Supplier.



- 22.4 Upon termination or expiry of the Contract, the Supplier shall:
- (a) if requested, and at the Council's election, return or securely destroy all documents, papers, materials and information, including extracts, relevant to the Contract which it has received, obtained, maintained, prepared or had prepared in connection with the Contract prior to such termination or expiry; and
 - (b) if requested, promptly prepare and submit to the Council a report on the Services delivered prior to the termination and setting out recommendations as may be appropriate based on the Services delivered prior to termination.
- 22.5 In the event of the appointment of the Supplier being terminated by the Council, the Council will be entitled to recover from the Supplier and the Supplier shall indemnify the Council against all additional loss and expense and all damages for all losses sustained by the Council as a result of such termination and/or breach of Contract and, without prejudice to the generality of this provision, the Council may forthwith employ and pay other persons to carry out and complete the Contract. If the Council does employ and pay other persons to carry out and complete the Contract, the Council will be entitled to recover from the Supplier and the Supplier shall indemnify and keep the Council fully indemnified in relation to the difference in cost between the cost of the original Contract and the cost of the new contract, if greater.
- 22.6 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 22.7 Notwithstanding the expiry or termination of the Contract clauses 5.7, 6.3, 7, 8.6, 9.12, 10, 12 and Schedule 1, clauses 13, 19 and Schedule 2 and clauses 22.4 to 22.7 inclusive will continue in full force and effect and may be founded upon by either Party.

23. Community Benefit

- 23.1 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.
- 23.2 In the event that the Supplier fails to provide the Community Benefit Provision in accordance with this clause 23, the Council reserves the right, on giving the Supplier not less than 7 Working Days' notice, to either (i) provide the Community Benefit Provision directly; or (ii) employ others to carry out the Community Benefit Provision.



23.3 The Supplier shall be liable for all additional costs incurred by the Council in connection with clause 23.2, and such costs may be withheld or deducted by the Council from any monies due or to become due to the Supplier under the Contract or shall be recoverable from the Supplier as a debt.

24. Business Continuity

24.1 The Supplier 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.

24.2 Such strategy shall include but not be limited to:

- (a) ensuring continuity of staffing;
- (b) ensuring continuity of service delivery; and
- (c) ensuring processes for safe storage and retrieval of all business information.

24.3 Any additional costs associated with the management of business continuity shall be the sole responsibility of the Supplier.

25. Sub-contracting

25.1 The Supplier may not sub-contract its 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 its intention to sub-contract part or all of the Services in the Tender.

25.2 To help the Council reach a decision on a proposed sub-contract, the Council may request (and the Supplier shall provide) a copy of the proposed sub-contract, together with any other information that the Council may reasonably require about the proposed sub-contractor and the impact of the proposed sub-contract on the Contract.

25.3 In the event that the Supplier enters into any sub-contract in connection with the Services, it shall:

- (a) remain responsible for all acts and omissions of its sub-contractors and the acts and omissions of those employed or engaged by the sub-contractors as if they were its own;
- (b) impose obligations on its sub-contractor in the same terms as those imposed on it pursuant to the Contract and procure that the sub-contractor complies with such terms; and
- (c) provide a copy, at no charge to the Council, of any such sub-contract on receipt of a request for such by the Council's authorised representative.



25.4 The Council may require the Supplier to terminate a sub-contract where the acts or omission of the relevant sub-contractor have given rise to the Council's right of termination of the Contract.

26. Assignment and other dealings

26.1 The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).

26.2 The Council may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract, provided that it gives prior written notice of such dealing to the Supplier.

27. Force majeure

27.1 Subject to the remaining provisions of this clause 27, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (the "**Affected Party**"), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

27.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

27.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event.

27.4 If the Supplier is the Affected Party, it shall not be entitled to claim relief to the extent that the consequences of the relevant Force Majeure Event should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services.

27.5 The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under the Contract. Following such notification, the Contract



shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

- 27.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than six months, the party not affected by the Force Majeure Event may terminate the Contract by giving one month's notice to the Affected Party.

28. Waiver

- 28.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 28.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

29. Severance

- 29.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.
- 29.2 If any provision or part-provision of the Contract is deemed deleted under clause 29.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

30. Entire Contract

- 30.1 Except where expressly provided otherwise in the Contract, the 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 the Contract, whether written or oral, except that this clause does not exclude liability in respect of any misrepresentation (whether in the Single Procurement Document, the Tender or otherwise).

31. No agency or partnership

- 31.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.



31.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

31.3 Except where expressly authorised in writing by the Council's proper officer, the Supplier shall not (and shall procure that any person to whom they are legally responsible for shall not) say or do anything that might lead any third party to believe that the Supplier is acting as the agent of the Council.

32. Third party rights

32.1 Unless expressly stated otherwise, the Contract does not confer on any party other than the Council and the Supplier any right to enforce or otherwise invoke its terms under the Contract (Third Party Rights) (Scotland) Act 2017 or otherwise.

33. Prevention of bribery

33.1 The Supplier represents and warrants that neither it, nor any Supplier personnel:

- (a) has committed a Prohibited Act;
- (b) to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
- (c) has 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.

33.2 The Supplier shall promptly notify the Council if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 33.1 at the relevant time.

33.3 The Supplier shall (and shall procure that its personnel shall) during the Term:

- (a) not commit a Prohibited Act;
- (b) not do or omit to do anything that would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;
- (c) have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent occurrence of a Prohibited Act;
- (d) notify the Council (in writing) if it becomes aware of any breach of clause 33.3(a) or clause 33.3(b), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of the Contract.



- 33.4 The Supplier shall maintain appropriate and up to date records showing all payments made by the Supplier in connection with the Contract and the steps taken to comply with its obligations under clause 33.
- 33.5 The Supplier shall allow the Council and its third party representatives to audit any of the Supplier's records and any other relevant documentation in accordance with clause 16.
- 33.6 If the Supplier is in default under this clause 33 the Council may by notice:
- (a) require the Supplier to remove from performance of the Contract any Supplier personnel whose acts or omissions have caused the default; or
 - (b) immediately terminate the Contract.
- 33.7 Any notice served by the Council under clause 33.6 shall specify the nature of the Prohibited Act, the identity of the party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which the Contract shall terminate).

34. Conflict of interest

- 34.1 The Supplier shall:
- (a) ensure that no conflict of interest arises in respect of his duties under the Contract;
 - (b) make all possible enquiries to ensure that there is no conflict of interest at the time of tender and prior to assuming the obligations to be undertaken by it in terms of the Contract; and
 - (c) advise the Council immediately if the Supplier considers that a conflict of interest has arisen or if it considers that a conflict of interest may arise and furnish the Council with such information as the Council may require to enable the Council to determine whether such a conflict of interest exists.
- 34.2 Should a conflict of interest arise or be deemed by the Council to have arisen due to a failure by the contractor to take all necessary steps to prevent such a conflict, this will be considered a material breach for the purpose of clause 22, and it will be at the option of the Council, without prejudice to any other right or remedy, to terminate the Contract with immediate effect and without compensation to the Supplier.

35. Eligibility to Contract

- 35.1 The Supplier warrants that, to the best of its knowledge, none of the grounds set out under Regulation 58(1) and 58(3) of the Public Contracts (Scotland) Regulations 2015 requiring or permitting the Council to treat the Supplier as ineligible to enter a contract (the **"Mandatory Exclusion Grounds"**) apply to it, its directors or any other person



who has powers of representation, decision or control of the Supplier as at the date of Tender submission.

- 35.2 The Supplier undertakes to advise the Council immediately if any of the Mandatory Exclusion Grounds apply to it, its directors or any other person who has powers of representation, decision or control of the Supplier at any time during the Term.
- 35.3 The Supplier undertakes to advise the Council immediately if any of the events set out in Regulation 58(8) of the Public Contracts (Scotland) Regulations 2015 (the “**Discretionary Exclusion Grounds**”) apply to it, its directors or any other person who has powers of representation, decision or control of the Supplier at any time during the Term.
- 35.4 The existence of a Mandatory Exclusion Ground or Discretionary Exclusion Ground is a material breach for the purpose of clause 22, and it will be at the option of the Council, without prejudice to any other right or remedy, to terminate the Contract with immediate effect and without compensation to the Supplier.
- 35.5 This condition 35 shall apply regardless of whether the Contract is regulated by the Public Contracts (Scotland) Regulations 2015.

36. Publicity

36.1 The Supplier shall not:

- (a) make any press announcements or publicise the Contract or its contents in any way; or
- (b) use the Council's name or logo in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Council, which shall not be unreasonably withheld or delayed.

37. Notices

37.1 Any notice given to a party under or in connection with the Contract shall be in writing marked for the attention of the party's authorised representative and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):
 - (i) COUNCIL: the email address specified in the Tender



(ii) SUPPLIER: the email address specified in the Tender

37.2 Any notice shall be deemed to have been received:

- (a) If delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, on the second Working Day after posting; or
- (c) if sent by email, at the time of transmission, or if this time falls outside Working Hours in the place of receipt, when Working Hours resume.

37.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

38. Governing law and jurisdiction

38.1 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the Laws of Scotland.

38.2 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 the Contract and irrevocably submit to the jurisdiction of those courts.



Schedule 1 – Data Protection

1. In this Schedule, the expressions “Personal Data”, “Personal Data Breach”, “Controller”, “Processor”, “processing”, and “Data Subject” shall have the meanings assigned to them by the Data Protection Legislation.
2. The Supplier shall comply with, and shall ensure that any sub-Processor that has access to the Council’s Personal Data complies with, all applicable requirements of the Data Protection Legislation. This Schedule 1 is in addition to, and does not relieve, remove or replace, the Supplier’s obligations under the Data Protection Legislation.
3. The parties acknowledge that for the purposes of the Data Protection Legislation, in relation to any Personal Data disclosed by the Council to the Supplier, the Council is the Controller and the Supplier is either the Controller or the Processor.
4. Where the Supplier is the Controller of any Personal Data disclosed by the Council to the Supplier, the parties agree, in relation to such Personal Data the parties will enter into a Data Sharing Agreement (“DSA”).
5. Should the nature of the sharing, storing or processing of such Personal Data change in any material respect, the parties agree to review these data protection provisions or the DSA and vary same if required.
6. Without prejudice to the generality of paragraph 2, the Supplier shall, in relation to any Personal Data processed by the Supplier on behalf of the Council in connection with the performance by the Supplier of its obligations under the Contract:
 - (a) process that Personal Data only in accordance with instructions from the Council and the terms of the Contract;
 - (b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;



- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (e) notify the Council immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (f) assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (g) on becoming aware of a Personal Data Breach:
 - (i) notify the Council without undue delay (and in any event within 24 hours of becoming aware of the Personal Data Breach);
 - (ii) provide such details relating to the Personal Data Breach as the Council reasonably requires; and
 - (iii) take such steps as the Council reasonably requires it to take to mitigate the detrimental effect of any such Personal Data Breach.
- (h) at the written direction of the Council, securely delete or return Personal Data and copies thereof to the Council on termination or expiry of the Contract unless required by Law to store the Personal Data;
- (i) maintain complete and accurate records and information to demonstrate its compliance with this Schedule 1 and allow for audits by the Council; and
- (j) and immediately inform the Council if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.



7. The Supplier shall acquire no rights, title or interest in the Council's Personal Data which shall vest and remain vested in the Council.
8. The Supplier shall not be required to pass any information to the Council if doing so would cause the Supplier to breach the Data Protection Legislation. The Supplier must supply detailed reasons in terms of the Data Protection Legislation in support of such an assertion within a reasonable timescale specified by the Council.
9. The Supplier shall not engage any sub-Processor to perform specific processing activities in respect of the Council's Personal Data on behalf of the Council without the prior express and written consent of the Council to the proposed addition of the sub-Processor. Where the Council gives its consent to the proposed appointment, the Supplier shall thereafter appoint the sub-Processor under a binding written contract ("Processor Contract") which shall impose on the sub-Processor materially the same data protection obligations as are contained in the Contract. The Supplier shall be fully liable to the Council for any sub-Processor's failure to act in accordance with the Processor Contract and/or with Data Protection Law.
10. Upon the termination or expiry of the Contract, the obligations contained in this Schedule 1 shall continue in full force and effect until all Personal Data that has been passed to the Supplier by the Council has been securely deleted or returned pursuant to paragraph 6(h).
11. The Supplier shall indemnify the Council in respect of any claims, losses, fines, damages or other such liability howsoever arising in respect of the Supplier's breach of this Schedule 1.



Schedule 2 – TUPE on exit

1. In this Schedule 2, the following words have the following meanings:

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| 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 pension 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 the Contract; |
| Transfer Assistance Period | means in relation to the Supplier and the Council (i) the period of nine months immediately preceding the expiry of the Contract or (ii) following notice of termination of the Contract; |
| 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 the Contract are wholly or mainly engaged or employed in the provision of the Services (or the terminating part thereof); and |
| TUPE Regulations | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended. |

2. In the event that the Services are put out to tender by the Council in furtherance of its obligations under the relevant Procurement Laws, the Supplier shall co-operate with the Council and any Replacement Contractor in ensuring the smooth handover of the Services.

3. The Supplier shall at any time during the Transfer Assistance Period:

- (a) on receiving a request from the 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 (including Employee Liability Information as defined in the TUPE Regulations) 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

(b) notify the Council in writing of any material changes to the Re-tendering Information promptly as and when such changes arise.

4. The Supplier undertakes that in the Transfer Assistance Period it shall not without the prior written consent of the Council (not to be unreasonably withheld or delayed):

(a) materially vary (or agree to 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

(b) increase or reduce the number of Assigned Employees; or

(c) replace any of the Assigned Employees.

5. In accordance with the Data Protection Legislation and with Schedule 1 (*Data Protection*), the Supplier shall maintain accurate, appropriate and secure personnel records 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 or such other date as may be agreed by the Parties.

6. 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 paragraphs 6 to 9 inclusive shall apply irrespective of whether or not the TUPE Regulations do apply.

7. All remuneration of any kind due to the Transferring Employees during the period of the Contract 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.

8. 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) 28 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.

9. 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, 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; or
 - (c) any claim or assertion by an employee or former employee of the Supplier that they have or should have transferred under the TUPE Regulations to the Council or any Replacement Contractor and any Employment Liabilities arising from the employment and/or dismissal of such an employee or settlement of any such claim or assertion and for the avoidance of doubt the definition of Employment Liabilities is agreed to apply to this paragraph 9(c) notwithstanding the reference to relevant employees.
10. The Supplier acknowledges and agrees that the Council 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 Schedule 2 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 Schedule 2 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 the Council in its favour in accordance with the provisions of this paragraph 10.
11. In the event that the Supplier fails to provide any of the Re-tendering Information requested by the Council during the Transfer Assistance Period, then the Council shall be entitled to withhold up to a maximum of 10% of the Price (as defined in above) for the Services from the Supplier without penalty until such time as the Supplier provides the Re- tendering Information.
12. Without prejudice to the obligations under paragraph 8, the Supplier shall be under an obligation to provide the information detailed within paragraph 8 to the Council within 28 Working Days of the Supplier executing the Contract.