WEST LOTHIAN COUNCIL

Conditions of Contract for the Supply of Services

SECTION 2: CONDITIONS OF CONTRACT

		Page Nos.
Introduction		
1.	Interpretation	18
2.	Entire agreement	19
3.	Contract period	19
4.	Services	19
5.	Commencement of Full Operations	19
Provision of Services		
6.	Conditions affecting provision of Services	20-21
7.	Contractor's Status	21
8.	Authority's Property	21
9.	Equipment	21-22
10.	Contractors Duties As An Employer.	22-23
11.	Co-ordination	23
12.	Use of Authority's Premises	23-24
13.	Right of Access to Authority's Property	24
14.	Manner of Providing the Services	24-25
15.	Standards	25
16.	Overtime Working	25
17.	Progress Reports	25
18.	Re-tendering and Handover	25-27
Payment		
19.	Payment and Value Added Tax	27
20.	Payment of Sub-contractors	27
21.	Price Adjustment	27
22.	Recovery of Sums Due	28
Protection of Information		
23.	Intellectual Property Rights	28
24.	Security	29
25.	Confidentiality	29-30
26.	Publicity	30
27.	Right of Audit	30
Liabilities		
28.	Indemnity and Insurance	30-31
Compliance with Legal Obligations		
29.	Corrupt Gifts and Payments of Commission	31
30.	Unlawful Discrimination	32
31.	Health and Safety	32

Page Nos.

Control of Contract

32.	Transfer and Sub-contracting	32-33
33.	Service of Notices and Communications	33
34.	Severability	33
35.	Waiver	34
36.	Variation	34

Default and Termination

37.	Force Majeure	34-35
38.	Termination on change of control and insolvency	35
39.	Termination on default	35
40.	Break	36
41.	Consequences of termination	36
42.	Deleted	36

Dispute of Resolution

43.	Dispute Resolution	36-37

Law

44.	Law and Jurisdiction	37
45.	Deleted	37

Appendix A:	Variation to Contract Form	38
Appendix B:	Not in use	
Appendix C:	Confidentiality Undertaking	39
Appendix D:	Contractor's Key Staff	40
Appendix E:	List of Authority's Property	41
Appendix F:	Not in use	
Appendix G:	Proposed Sub-Contractors	42
Appendix H:	Certificates of Insurance	
Appendix I:	Pecos Data Form	43-44
Appendix J:	Freedom of Information (Scotland) Act 2002	45
Appendix K:	Contractors Questionnaire	46
Appendix L:	Protection of Children Scotland Act 2003	47-49

CONDITIONS

1. INTERPRETATION

1.1 In this Contract:-

"Advance Purchase Order" means a Purchase Order estimating the Authority's requirement for the goods or services for the current financial year.

"Approval" and "Approved" refer to the written consent of the Authority's Representative.

"Authority" means West Lothian Council and includes the Authority's Representative.

"Authority's Premises" means land or buildings owned or occupied by the Authority where the services are delivered..

"Authority's Property" means any property, other than heritable property, issued or made available to the Contractor by the Authority in connection with the Contract, (as set out in Appendix E).

"Authority's Representative" means the individual authorised to act on behalf of the Authority for the purposes of the Contract as notified to the Contractor from time to time.

"Authority's Responsibilities" means the obligations, dependencies and responsibilities of the Authority identified in the Contract.

"Commencement Date" means the date on which the Contract commences in terms of Condition 3.1.

"Commencement of Full Operations" means the point in time when the Contractor becomes responsible for the provision of the Services following the completion of the Setting up Operations. In the event that the Contractor's responsibility for the provision of the Services is phased, the commencement of Full Operations means the commencement of each phase following the Setting up Operations in respect of that phase.

"Condition" means a condition within the Contract.

"Contract" means the agreement to the Conditions between the Authority and the Contractor consisting of the following Sections and any Terms of Reference which, in the event of ambiguity or contradiction between the same, shall be given precedence in the order listed:-

a) Section 1: Form of Agreement;
b) Section 2: Conditions of Contract;
c) Terms of Reference (where applicable)
d) Section 3: Specification;
e) Section 4: Schedule of Prices & Rates.

"Contractor" means the Person named as the Contractor in Section 1: Form of Agreement, his permitted successors and assignees.

"Contractor's Representative" means the individual authorised to act on behalf of the Contractor for the purposes of the Contract.

"Contract Period" means the period of the duration of the Contract in accordance with Condition 3.

"Contract Price" means the price, exclusive of Value Added Tax, payable by the Authority to the Contractor for the Supply of Services.

"Electronic/E Procurement System" means the ability to conduct business transactions electronically with the authority via Elcom's Pecos system.

“Equipment” means all equipment, materials, consumables and plant, other than the Authority’s Property, to be used by the contractor in the provision of the Services.

"Intellectual Property Rights” means patents, trade marks, service marks, design rights (whether registerable or not), applications for any of the above rights, copyright, trade or business names or other similar rights or obligations whether registerable or not in any country including but not limited to the United Kingdom.

“Key Staff” means Staff identified in Appendix D.

“Month” means calendar month.

“Parties” means the Authority and the Contractor as identified in Section 1: Form of Agreement.

“Pecos” means software that is fully hosted on a remote server(s) that can be accessed via the Internet using a standard PC and web browser.

“Person” where the context allows, includes a corporation or an unincorporated body.

“Personnel” means persons directly employed by the Authority.

“Premises” means land or buildings where the Services are performed.

“Price” means a price entered in Section 4: Schedule of Prices and Rates or as may be otherwise agreed in any Terms of Reference entered into pursuant to the Contract.

“Purchase Card” means a bank provided charge card that empowers staff to obtain services without the need for paper requisitions, purchase orders or invoices.

“Purchase Order” means a paper purchase order, a verbal Purchase Card transaction or a Purchase Order received via Pecos.

“Rate” means a rate entered in Section 4: Schedule of Prices and Rates.

“Services” means the services set out in Section 3: Specification or as more particularly described in any Terms of Reference.

“Setting up Operations” means the activities the Contractor shall undertake between the Commencement Date and the Commencement of Full Operations as set out in the Specification.

“Site” means the area within the Premises in which the Services are performed.

“Staff” means all persons used by the Contractor to supply the Services.

"Terms of Reference" means any terms of reference document(s) agreed in writing between the parties pursuant to the Contract describing the Services, the Authority's Responsibilities and the Price in respect of the same.

“Variation” means a properly executed variation to the Contract in compliance with Condition 36.

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

a) a reference to any statute, enactment, order, regulation or similar instrument shall be construed as a reference to the statute, enactment order, regulation or instrument as subsequently amended or re-enacted.

b) the headings to Conditions are for ease of reference only and shall not affect the interpretation or construction of the Conditions;

c) references to Conditions are references to Conditions in the Section of the contract which they appear, unless otherwise stated;

d) where the context allows, the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa.

2. ENTIRE AGREEMENT

2.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiation, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.

3. CONTRACT PERIOD

3.1 The Contract shall take effect on the (……..) and shall expire (…..) years after the date specified in Section 3: Specification, for the Commencement of Full Operations unless it is otherwise terminated in accordance with the provisions of these Conditions, or extended under Condition 3.2.

3.2 The Authority may extend the Contract Period by up to a further (…) years in total, by issuing a Variation no later than four Months before the Contract would otherwise expire.

4. SERVICES

4.1 The Contractor shall perform the Services in accordance with the provisions of the Contract subject to compliance by the Authority with its obligations under the Contract and further subject o the Authority providing the Contractor with all necessary information and assistance necessary for the provision of the Services.

4.2 Prior to undertaking any Services under the Contract, the Contractor shall prepare terms of reference, when deemed necessary, including without limitation (where applicable) details of scope of the Services, business objectives, success criteria, deliverables, risks, assumptions, roles and responsibilities, exclusions, timescales, and budgetary costs, in respect of the relevant Services required by the Authority at the cost and expense of the Authority, such cost and expense to be subject to the prior Approval of the Authority.

4.3 The Contractor shall provide such terms of reference to the Authority prior to performing the Services to which such terms of reference relate and the Contractor shall not be liable to the Authority for failing to provide the Services to which any such terms of reference relate unless and until the authority has given its prior Approval in respect of the cost and expense of the relevant terms of reference and the parties have agreed in writing the terms of reference in relation to the relevant Services.

5. COMMENCEMENT OF FULL OPERATIONS

5.1 The Authority shall authorise the Commencement of Full Operations on the date Specified in Section 3: Specification, if the Contractor has complied fully with the requirements set out in the Specification relating to the Setting up Operations.

5.2 If the Authority has not authorised the Commencement of Full Operations in accordance with condition 5.1, the Authority shall have the right, after taking into account all representations made by the Contractor; either,

a) to extend the Setting up Operations for such period as may be specified by the Authority, during which period the Contractor shall correct the fault or deficiency which caused the Authority to withhold authorisation for the Commencement of Full Operations; or

b) to terminate the Contract, or to terminate the provision of any part of the Service, in accordance with Condition 39.

5.3 Where the Authority has not authorised the Commencement of Full Operations on the expiration of any extension of the Setting up Operations under Condition 5.2(a), the Authority shall have the right to repeat the exercise of the options set out in Condition 5.2.

6. CONDITIONS AFFECTING PROVISION OF SERVICES

6.1 TERMS AND CONDITIONS

This Contract may only be varied with the written agreement of the Authority. No terms or conditions put forward at any time by the Contractor shall form any part of the Contract other than those proposed and accepted in accordance with Document 3, Part 2: Proposed Amendments to the Contract Documents or in accordance with Conditions 4 or 36.

6.2 ORDERS, DELIVERY NOTES AND INVOICES

6.2.1 All purchase orders, advance purchase orders, delivery notes and invoices are for administration purposes only. The Conditions as set out in accordance with Condition 6.1 shall apply at all times.

6.2.2 The Contractor shall not supply any Service without receipt of a Purchase Order.

6.2.3 Failure by the Contractor to ensure receipt of a Purchase Order may delay payment in accordance with Condition 19.

6.2.4 The Contractor may assign to another person (an "assignee")

(i) the right to receive payment of the Price or any part thereof due to the Contractor under this Contract subject to deduction of sums in respect of which the Authority exercises its right of recovery under Condition 22 of this Contract and;

(ii) all the related rights of the Authority under this Contract in relation to the recovery of sums due but unpaid.

(iii) The Contractor shall notify or procure that any assignee notifies the Authority of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Authority to redirect payments or invoices accordingly. In the absence of such notification the Authority shall be under no obligation to vary its arrangements for payment of the Price or for handling invoices.

6.3 AWARD

The Authority reserves the right to award all or any part of a contract to any Contractor. The Authority reserves the right not to award all or any part of a contract.

6.3.1 Any tender for the supply of services submitted to the Authority may be subject to post tender negotiations as provided for in the Authority's standing orders.

6.3.2. The Contractor shall be deemed to have satisfied himself as regards the nature and extent of the Services, the means of communication with and access to the site, the supply and conditions affecting labour, the suitability of the Authority's Property and the Equipment necessary for the performance of the Services, subject to all such matters being discoverable by the Contractor.

6.3.3. Prior to the award of the contract the Contractor must agree in writing to conduct business transactions electronically with the Authority in accordance with Condition 6.4.

6.4 ELECTRONIC PROCUREMENT

6.4.1 It is the Authority's intention to procure Services electronically via Pecos. It is therefore mandatory that all Contractors to the Authority agree to complete supplier data form, Appendix I in writing, and to conduct business transactions with the Authority electronically via Pecos.

6.4.2 The degree of participation and the timescale to commence participation will be agreed in writing prior to the award of the Contract.

6.4.3 Any Contractor who gives this undertaking and does not commence participation within the agreed timescale will be in breach of Contract and the Contract shall be terminated in accordance with Condition 39.

6.5 PURCHASE CARDS

6.5.1 It is the Authority's intention to procure Services with Purchase Cards. It is therefore mandatory that all Contractors to the Authority have full Line Item Detail capability. Evidence of this capability will be required as part of the tender process.

6.5.2 Any Contractor who is not Line Item Detail enabled will be required to give an undertaking that within a mutually agreed timescale after the Contract Commencement Date they will become Line Item Detail enabled.

6.5.3 Any Contractor who gives this undertaking and who does not become Line Item Detail enabled will be in breach of contract and the Contract shall be terminated in accordance with Condition 39.

7. CONTRACTOR'S STATUS

7.1 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the Contractor.

8. AUTHORITY'S PROPERTY

8.1 All the Authority's Property shall remain the property of the Authority and shall be used in the performance of the Contract and for no other purpose without prior Approval.

8.2 On receipt of the Authority's Property the Contractor shall subject it to a visual inspection and testing as may be necessary to check that it is not defective. Within fourteen days of receipt of any item of the Authority's Property, or such other period as may be Approved, the Contractor shall notify the Authority in writing of any defects discovered. Within fourteen days after receiving such notification, the Authority shall inform the Contractor of the action to be taken with such defective property.

8.3 a) The Authority shall maintain all items of the Authority's Property detail in Appendix E and marked "A", in good and serviceable condition, fair wear and tear excepted, and in accordance with the manufacturers' recommendation**.**

b) The Contractor shall maintain all items of the Authority's Property detailed in Appendix E and marked "C", in good and serviceable condition, fair wear and tear excepted, and in accordance with the manufacturers' recommendation.

c) The Contractor shall be responsible for any costs resulting from any item of the Authority's Property detailed in Appendix E, requiring replacement as a direct result of the contractors negligence.

d) Any item replaced under Condition 8.3(c), will be left in-situ on expiry of the Contract.

8.4 The Authority shall not be responsible for any costs resulting from any loss of or damage to or failure of the Authority's Property caused by the Contractor unless the Contractor is able to demonstrate that such loss, damage or failure was caused or contributed to by the negligence or default of the Authority.

8.5 The Contractor shall not in any circumstances have a lien on any of the Authority's Property and shall take all steps necessary to ensure that the title of the Authority and the exclusion of any lien are brought to the attention of any third party dealing with the Authority's Property.

9. EQUIPMENT

9.1 The Contractor shall provide all the Equipment necessary for the provision of the Services.

9.2 The Contractor shall maintain all items of Equipment in good and serviceable condition.

9.3 All Equipment shall be at the risk of the Contractor and the Authority shall have no liability for any loss of, or damage to, any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Authority.

9.4 The Contractor shall provide for the haulage or carriage of Equipment to the Premises and its off-loading and removal when no longer required.

9.5 The Authority may at its option purchase any item of Equipment from the Contractor at any time, if the Authority considers that the item is likely to be required in the provision of the Services following the expiry or termination of the Contract, subject to the purchase price to be paid by the Authority in respect of the same being agreed in writing between the parties.

10. CONTRACTORS DUTIES AS AN EMPLOYER

10.1 General

10.1.1 All Staff shall possess the qualifications and competence appropriate to the tasks for which they are employed.

10.1.2 The Contractor shall provide, at all times, the number of Staff required to fulfil his obligation under the Contract.

10.1.3 Unless given prior Approval, the Contractor shall make the Key Staff available as the Contractor shall deem appropriate for the entire period needed as required to fulfil their part in the provision of the Services, whilst they are employed or engaged by the Contractor.

10.1.4 Without the prior written consent of the other party neither party to the Contract shall for the duration of this Contract and for a period of six months thereafter solicit, procure or attempt to procure the employment or professional services (either directly or indirectly) of any of the personnel engaged by the other party (whether employees or contractors) in the performance of this Agreement.
If either party should engage personnel in breach of this condition, both parties acknowledge that it is reasonable that the party should upon commencement of the engagement pay to the other party by way of damages a sum equal to 50% of the employee's initial gross annual salary and associated benefits. Both parties agree that this condition shall apply to any parent, subsidiary or otherwise associated company.

10.1.5 When the Protection of Children (Scotland) Act 2003 is applicable, the Contractor must immediately inform the Authority, in writing, of any changes in staff personnel.

10.2 Protection of Children (Scotland) Act 2003

10.2.1 The Contractor must comply with the provisions of the Protection of Children (Scotland) Act 2003 and of any statutory instrument and Code of Practice made thereunder.

10.2.2 Where in the reasonable opinion of the Authority, the requirements of the Police Act 1997, the PofC (S) A 2003 or the Rehabilitation of Offenders Act 1974 (Exclusions and Exemptions) Order 2003, apply, the Contractor must take all reasonable steps to ensure that all servants, employees or agents of the Contractor and all sub-contractors employed in the performance of the Contract are employed in accordance with Condition 10.2.1.

10.2.3 Evidence or certification of compliance with the Protection of Children (Scotland) Act 2003 is required to be submitted under the Contract, at regular intervals or on demand by the Authority.

The Contractor shall render evidence of compliance in a format specified or as otherwise agreed between the Parties.

10.2.4 In the event that, the Contractor's employees and sub-contractors are exempt from the provision of Section 4 (2) of the Rehabilitation of Offenders Act 1974 (Exclusions and Exemptions) Order 2003, as amended. The Contractor shall ensure that all employees and sub-contractors engaged in the performance of the Contract shall provide information in accordance with the Protection of Children (Scotland) Act 2003 about convictions that would otherwise be spent under the provisions of the Protection of Children (Scotland) Act 2003. The Contractor shall provide sufficient information to enable Disclosure Scotland checks to be performed. The Contractor shall be responsible for his employees and sub-contractors achieving the necessary statutory certification to allow them to work in areas where children and vulnerable persons are present.

The Council will meet the costs of the Disclosure Scotland checks.

10.2.5 Where any employees or sub-contractor has refused to complete a statement concerning their previous convictions or in the reasonable opinion of the Authority a person is unsuitable to perform the Contract, the Authority reserves the right without prejudice to its other legal remedies to require such person to be withdrawn immediately from performance of the Contract.

10.2.6 The failure by the Contractor to comply with Conditions 10.2.1 – 10.2 .5 will be deemed to be a fundamental breach of the Contract and therefore the Contract will be terminated with immediate effect in accordance with Condition 39.

11. CO-ORDINATION

11.1 The Contractor shall co-ordinate his activities in the provision of the Services with those of Personnel and other contractors or consultants engaged by the Authority.

12. THE AUTHORITY'S PREMISES

12.1 USE OF

12.1.1 Where the Services are performed on the Authority's Premises the Contractor shall have the use of the Authority's Premises without charge as a licensee and shall vacate those premises on completion or earlier termination of the Contract.

12.1.2 The Contractor shall not use the Authority's Premises for any purpose or activity other than the provision of the Services unless given prior Approval.

12.1.3 Should the Contractor require modifications to the Authority's Premises, such modification shall be subject to prior Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake Approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.

12.1.4 The Contractor shall not deliver any Equipment to the Authority's Premises outside normal working hours without prior Approval.

12.1.5 The Contractor shall maintain all Equipment and its place of storage within the Authority's Premises in a safe, serviceable and clean condition.

12.1.6 On the completion or earlier termination of the Contract, the Contractor shall, subject to the provisions of Condition 9.5, remove all Equipment and shall clear away from the Authority's Premises all waste arising from the performance of the Services and shall leave the Authority's Premises in a clean and tidy condition.

12.1.7 Whilst on the Authority's Premises, the Contractor shall use its reasonable endeavours to ensure that all Staff shall comply with such rules, regulations and other requirements as may be in force in respect of the conduct of Persons attending and working on the Authority's Premises as notified to the Contractor.

12.2 TOBACCO POLICY

12.2.1 Smoking is not permitted indoors in the Authority's premises or in the Authority's vehicles.

12.2.2 The Authority does not provide special smoking rooms/areas within its premises.

12.2.3 Contractors are not allowed to smoke in vehicles during authorised journeys on authority business where other employees or clients are travelling in the vehicle as passengers.

12.2.4 For a full copy of the Authority's Tobacco Policy, contact the Policy and Health Manager, Tel: 01506 777155.

13. RIGHT OF ACCESS TO THE AUTHORITY'S PREMISES

13.1 Where the Services are to be delivered on the Authority's Premises, the Authority shall grant to the Contractor reasonable access to the site.

13.2 If the Authority gives the Contractor notice that a specifically named member of Staff shall not be admitted to the Authority's Premises, the Contractor shall use its reasonable endeavours to ensure that that person shall not seek admission and shall not be admitted.

13.3 If and when so directed in writing by the Authority, the Contractor shall within seven days provide:-

a) a list showing the company name and address of every person whom the Contractor wishes to be admitted to the Authority's Premises and, where required by the Authority every other person who is or may be involved in any other way in the performance of the Contract, the capacity in which each person is or may be so involved and any other particulars required by the Authority;

b) satisfactory evidence as to the identity of each such person; and

c) any other information about each such person, with any supporting evidence required by the Authority, including full details of birthplace and parentage of any such person who is not a citizen of the United Kingdom by birth, or born within the United Kingdom of parents who were not citizens of the United Kingdom by birth.

13.4 Where Staff are required to have a pass for admission to the Authority's Premises, the Authority's Representative shall, subject to satisfactory completion of approval procedures, arrange for passes to be issued.

13.5 Staff who cannot produce a proper pass when required to do so by any appropriate Personnel or Agent of the Authority, or who contravene any conditions on the basis of which a pass was issued, may be refused admission to the Authority's Premises or required to leave those Premises if already there.

13.6 The Contractor shall use its reasonable endeavour to ensure that any pass issued to the Contractor or any of its employees is promptly returned if at any time the Authority's Representative so requires or if the person for whom it was issued ceases to be involved in the performance of the Contract. The Contractor shall use its reasonable endeavours to ensure that all passes issued to the Contractor or any of its employees are promptly returned to the Authority on completion or earlier termination of the Contract.

14. MANNER OF PROVIDING THE SERVICES

14.1 The Contractor shall perform the Services with all due care, skill and diligence, and in accordance with good practice. The Contractor shall use its reasonable endeavours to provide the Services in accordance with any timescales agreed in writing between the parties.

14.2 If any of the Services are performed on land or buildings owned or occupied by the Authority, such Services shall be performed only on Approved Sites. The Authority acknowledges that the whole or any part of the Services may be performed on land or buildings not owned or occupied by the Authority (offsite) subject to prior approval by the Authority.

14.3 The Contractor shall, upon the instruction of the Authority's Representative:-

a) remove from the Authority's Premises any materials which are not in accordance with Section 3: Specification and substitute proper and suitable materials;

b) remove and properly re-execute any work which is not in accordance with the Contract, irrespective of any previous testing or payment by the Authority. The Contractor shall at his own expense complete the re-executed work correctly in accordance with the Contract within such reasonable time as the Authority may specify.

14.4 The signing by the Authority's Representative of time sheets or other similar documents shall not be construed as implying the Contractor's compliance with the Contract.

15. STANDARDS

15.1 Materials and processes used in connection with the provision of the Services shall be in accordance with the standards set out in Section 3: Specification.

15.2 On the request of the Authority's Representative, the Contractor shall provide proof to the Authority's satisfaction that the materials and processes used, or proposed to be used, conform to those mutually agreed standards.

15.3 The introduction of new methods or systems by the Contractor which will, in the opinion of the Contractor, have a material adverse effect on the Authority's ability to retender the Services shall require the prior Approval of the Authority.

16. OVERTIME WORKING

16.1 The Contractor shall not normally be prevented from working reasonable overtime hours on the Authority's Premises if he so desires, provided that he obtains prior Approval and it is at no additional cost to the Authority.

17. PROGRESS REPORTS

17.1 Where progress reports are required to be submitted under the Contract, the

Contractor shall render those reports at such time and in such form as may be specified or as otherwise agreed between the Parties.

17.2 The submission and receipt of progress reports shall not prejudice the rights of either Party under the Contract.

18. RE-TENDERING AND HANDOVER

18.1 Within twenty-one days of being so requested by the Authority's Representative, the Contractor shall provide, and thereafter keep updated, in fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.

18.2 Where the Transfer of Undertakings (Protection of Employment) Regulations 2006 may apply on the termination or expiration of the contract, the information to be provided by the Contractor within twenty one days of being so requested by the Authority's Representative or a potential Contractor's Representative, who has qualified to tender for the future provision of the Service, shall include, as applicable, accurate information relating to the Staff who would be transferred under the same terms of employment under those Regulations, including in particular:-

a) the number of Staff who would be transferred, but with no obligation on the contractor to specify their names;

b) in respect of each of those members of Staff, their age, sex, salary, length of service, hours of work, overtime hours and rates, any other factors affecting redundancy entitlement and any outstanding claims arising from their employment;

c) the general terms and conditions applicable to those members of Staff, including probationary periods, retirement age, periods of notice, current pay agreement, working hours, entitlement to annual leave, sick leave, maternity and special leave, terms of mobility, any loan or leasing schemes, any relevant collective agreements, facility time arrangements and additional employment benefits.

18.3 The Authority shall require any potential Contractor, who has qualified to tender for the future provision of the Service, to treat the information referred to in Condition 18.2 in confidence, that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority, and that they shall not use it for any other purpose.

18.4 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Contractor is required to provide under Condition 18.2.

18.5 The Contractor shall not:-

a) at any time during the Contract Period, including any extension of the original Contract Period, move any persons in this employment into the undertaking or relevant part of an undertaking which provides the Services, who do not meet the standards of skill and experience, or who are in excess of the number, required for the purpose of the Contract; or

b) make any substantial change in the terms and conditions of employment of any Staff which is inconsistent with the Contractor's established employment and remuneration policies.

18.6 Where, in the opinion of the Authority's Representative, any change or proposed, change in the Staff in the undertaking or relevant part of an undertaking, or any change in the terms and conditions of employment of such Staff, would be in breach of Condition 18.5, the Authority shall have the right:-

a) to make representations to the Contractor against the change or proposed change;

b) to give notice to the Contractor requiring him to remedy the breach within thirty days; and

c) if the Contractor has not remedied the breach to the satisfaction of the Authority's Representative by the end of the period of thirty days, to terminate the Contract by reason of the default of the Contractor, in accordance with Condition 39.

18.7 The Contractor shall allow access to the Site, in the presence of the Authority's Representative, to any person representing any Service provider whom the Authority has selected to tender for the future provision of the Services.

18.8 For the purpose of access to the Site in accordance with Condition 18.7, where the Site is on the Contractor's premises, the Authority shall give the Contractor seven days' notice of a proposed visit together with a list showing the names of all persons who will be attending those premises. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to compliance not being in conflict with the objectives of the visit.

18.9 The Contractor shall co-operate fully with the Authority during the handover arising from the completion or earlier termination of the Contract. This co-operation, during the Setting Up Operations period of the new Contract, shall extend to allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

18.10 Within ten working days of being so requested by the Authority's Representative, the Contractor shall transfer to the Authority, or any Person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawings held on software and utilised in the provision of the Services subject to the necessary approvals being granted under Data Protection legislation. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identified to that used by the Authority.

19. PAYMENT AND VALUE ADDED TAX

19.1 In consideration of the provision of the Services by the Contractor in accordance with the terms of the Contract, the Authority shall pay the Contractor a proportion of the Contract Price calculated in accordance with Section 4 - Schedule of Prices and Rates.

19.2 The Contractor shall submit an original invoice to the Authority immediately following provision of the Services. Each invoice shall contain all appropriate references, a detailed breakdown of the Services and the appropriate Prices or Rates, to two decimal places, and shall be supported by any other documentation required by the Authority's Representative to substantiate the invoice.

19.3 Payment shall be made to the Contractor within thirty days of receipt by the Authority (at its nominated address for invoices) of the Contractor's valid original invoice.

19.4 The Authority shall pay the Contractor, in addition to the Contract Price, a sum equal to the Value Added Tax chargeable on the value of the Services provided in accordance with the Contract.

19.5 The Authority may reduce payment in respect of any Services, which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.

19.6 Where Purchase Cards are used to obtain Services, Conditions 19.1 - 19.5 inclusive will not apply.

19.7 In accordance with Condition 19.6, payment of these Services will be made to the Contractor by the Authority's Purchase Card Provider.

19.8 Where Pecos is used to order Services, payment may be made in accordance with Conditions 19.1 – 19.5 or Conditions 19.6 – 19.7.

20. PAYMENTS OF SUB-CONTRACTORS

20.1 Where the Contractor enters into a sub-contract for the provision of any part of the Services, the Contractor shall ensure that a term is included in the sub-contract, which requires the Contractor to pay all sums due to the sub-contractor within a specified period, not exceeding thirty days from the date of receipt of a valid invoice as defined by the terms of that sub-contract.

21. PRICE ADJUSTMENT

21.1 Prices and Rates shall normally be fixed for the first year of the Contract and shall include for the delivery of the Services to such premises within West Lothian as the Authority directs. In some cases, however, fixed prices may not be feasible. In these instances, the Contractors are required to state their terms for the delivery of the Services on the page provided for qualifications, Document 3 - Part 2.

21.2 Prices and rates shall be reviewed twelve months after the Commencement Date, as specified in Condition 3, and thereafter annually for the Contract Period. The amount payable by the Authority to the Contractor shall be increased or decreased by a percentage calculated over a period of twelve elapsed months in accordance with the Retail Prices Index (all items) compiled by the Office for National Statistics, which can be viewed at http://www.statistics.gov.uk/instantfigures.asp and recorded as a variation in accordance with Condition 36.

21.3 Price/rate increases shall not be applied until thirty days from the date of agreement in writing by the Authority.

22. RECOVERY OF SUMS DUE

22.1 Whenever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of this Contract), the Authority may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Contractor under this Contract or under any other contract with the Authority.

22.2 The Authority shall give at least twenty-one days' notice in writing to the Contractor of its intention to make a deduction under Condition 22.1, giving particulars of the sum to be recovered and the contract under which the payment arises from which the deduction is to be made together with the grounds for making such deduction.

22.3 Any overpayment by the Authority to the Contractor, whether of the Contract Price or of Value Added Tax, shall be a sum of money recoverable by the Authority from the Contractor.

23. INTELLECTUAL PROPERTY RIGHTS - ASSIGNMENT AND INDEMNITY

23.1 The Contractor hereby assigns to the Authority all Intellectual Property Rights owned by the Contractor in any material which is generated by the Contractor and delivered to the Authority exclusively in the performance of the Services and shall waive all moral rights relating to such material. The Contractor shall not reproduce, publish or supply any such material to any Person other than the Authority without prior Approval.

23.2 In performing the Services the Contractor shall obtain Approval before utilising any material which is or may be subject to any Intellectual Property Rights other than any of the Contractor's Intellectual Property Rights the Authority's Intellectual Property Rights or those Intellectual Property Rights referred to in Condition 23.1

23.3 Subject to Condition 23.4, the Contractor shall indemnify the Authority against all claims, proceedings, actions, damages, settlements, legal costs (including but not limited to legal costs and disbursements on a solicitor and client basis), and expenses arising from, or from the use by the Authority following delivery by the Contractor, of any material developed exclusively during the provision of the Services which infringes the Intellectual Property Rights of any third party provided that the Authority (a) notifies the Contractor promptly on becoming aware of any such claim, proceedings, action, damages, settlement, legal costs and expenses in respect of the same, (b) does not by any act or omission admit liability or make or agree to make any payment in respect of the same and allows the Contractor sole control of the defence or settlement of the same and (c) provides the Contractor with all reasonable assistance in respect of the same.

The foregoing provisions shall not apply insofar as any such infringement is caused by or arises from, (a) the use by or on behalf of the Authority of any material developed exclusively during the provision of the Services in combination with any item or materials not supplied by the Contractor, (b) any alteration or modification carried out by or on behalf of the Authority to any materials developed exclusively during the provision of the Services without the prior written approval of the Contractor, or (c) the use of any specification or compliance with any requirements or instructions issued by the Authority to the Contractor.

23.4 The provisions of Condition 23.3 shall not apply in respect of any material which the Authority has supplied to the Contractor or which the Authority has specified for use by the Contractor or for delivery to the Authority.

23.5 The Authority shall indemnify the Contractor against all claims, proceedings, actions, damages, legal costs (including but not limited to legal costs and disbursements on a solicitor and client bases), expenses and any other liabilities arising from or incurred by the use by the Contractor, in the performance of the Services, of any material referred to in Condition 23.4 which involves any infringement or alleged infringement of the Intellectual Property Rights of any third party.

23.6 Where any claim is made by a third party in respect of any material referred to in Condition 23.3 or 23.5, the Party, which is required to provide an indemnity under those provisions, shall have the right to conduct, or take over the conduct of, the defence to the claim and to any proceedings or action brought by the third party.

24. SECURITY

24.1 The Contractor shall take all reasonable measures, by the display of notices or other appropriate means, to ensure that Staff have notice that all enactments relating to security which are applicable to the Contractor in providing the Services shall apply to them and shall continue to apply to them, if so applicable, after the expiry or earlier termination of the Contract.

24.2 Whilst on the Authority's Premises, the Contractor shall use its reasonable endeavours to ensure that Staff comply with all security measures implemented by the Authority in respect of Personnel and other Persons attending those Premises to the extent that the Authority has provided copies of its written security procedures to the Contractor.

24.3 The Authority shall have the right to carry out any search of Staff or of vehicles used by the Contractor at the Authority's Premises.

24.4 The Contractor shall co-operate with any investigation relating to security which is carried out by the Authority or by any person who is responsible to the Authority for security matters and when required by the Authority's Representative:-

a) shall use his best endeavours to make any Staff identified by the Authority's Representative available to be interviewed by the Authority's Representative, or by a person who is responsible to the Authority for security matters, for the purposes of the investigation. Staff shall have the right to be accompanied by the Contractor's Representative and to be advised or represented by any other person whose attendance at the interview is acceptable to both the Authority's Representative and the Contractor's Representative; and

b) shall, subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind which may reasonably be required by the Authority or by a person who is responsible to the Authority for security matters, for the purposes of the investigation. The Authority shall have the right to retain any such material for use in connection with the investigation and, so far as possible, shall provide the Contractor with a copy of any material retained.

25. CONFIDENTIALITY

25.1 Each Party:-

a) shall treat as confidential all information obtained from the other Party under or in connection with the Contract;

b) shall not disclose any of that information to any third party without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract;

c) shall not use any of that information otherwise than for the purposes of the Contract.

25.2 The Contractor shall take all necessary precautions to ensure that all information obtained from the Authority under or in connection with the Contract:-

a) is given only to the minimum number of Staff and only to the extent necessary for each member of Staff's activities in the provision of the Services; and

c) is treated as confidential and not disclosed (without prior Approval) or used by any Staff otherwise than for the purposes of the Contract.

25.3 Where it is considered necessary in the opinion of the Authority's Representative, on request by the Authority the Contractor shall ensure that Staff sign a confidentiality undertaking before commencing work in connection with the provision of the Services. The confidentiality undertaking shall be in the form set out in Appendix C.

25.4 Conditions 25.1 and 25.2 shall not apply to any information:-

a) required to comply with the Freedom of Information (Scotland) Act 2000 and any codes of practice applicable from time to time relating to access to

public authorities' information.

b) which is or becomes public knowledge (otherwise than by breach of this Condition); or

c) which is in the possession of the Party concerned, without restriction as to its disclosure, before receiving it from the disclosing Party; or

d) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.

25.5 Nothing in this Condition shall prevent the Authority:-

a) disclosing such information relating to the outcome of the procurement process for the Contract as may be required to be published in the Supplement to the Official Journal of the European Union; or

b) disclosing any information obtained from the Contractor:-

(i) to any other department of the Authority or any other Public Body; or
(ii) to any Person engaged in providing any services to the Authority for any purpose relating to or ancillary to the Contract,

provided that in disclosing information under sub-paragraph (i) or (ii) the Authority shall disclose only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate; or

c) disclosing information obtained from the Contractor under Condition 18.4 subject to the obligations imposed by Condition 18.5.

25.6 Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of confidential information or an infringement of any Intellectual Property Rights.

25.7 The Contractor shall not use any confidential information obtained from the Authority for the solicitation of business from the Authority or any other part of the Authority.

25.8 The obligations imposed by this Condition shall continue to apply after the expiry or termination of the Contract.

26. PUBLICITY

26.1 The Contractor shall not make any public statement relating to the existence or performance of the Contract without prior Approval, which shall not be unreasonably withheld.

27. RIGHT OF AUDIT

27.1 The Contractor shall keep secure and maintain until two years after the final payment of all sums due under the Contract, or such longer period as may be agreed between the Parties, full and accurate records of the Services, all expenditure reimbursed by the Authority and all payments made by the Authority.

27.2 The Contractor shall grant to the Authority, its Auditor or its authorised agents, such access to those records as they may reasonably require in order to check the Contractor's compliance with the Contract.

28. INDEMNITY AND INSURANCE

28.1 The Contractor shall indemnify the Authority fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities in respect of any financial loss, death or personal injury, or loss of or damage to property, unless the Contractor is able to demonstrate that such financial loss, death or personal injury, or loss of or damage to property was not caused or contributed to by his negligence or

default, or the negligence or default of his Staff or sub-contractors, or by any circumstances within his or their control.

28.2 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of the risks which may be incurred by the Contractor, as set out in Condition 28.1.

28.3 The Contractor shall hold employer's liability insurance in accordance with any legal requirement for the time being in force.

28.4 The Contractor shall produce to the Authority, at the time of tendering, completed certificates of insurance as detailed in Appendix H. In all cases the certificates of insurance shall be completed by the Contractor's insurer or insurance broker. Where certificates of insurance are completed by an insurance broker, the broker shall be a member of the General Insurance Standards Council or equivalent.

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

29. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

29.1 The Contractor shall not do (and warrants that in entering the Contract he has not done) any of the following (referred to in this condition as "prohibited acts").

a) offer, give or agree to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this or any other contract with the Authority, or for showing or not showing favour or disfavour to any Person in relation to this or any other contract with the Authority;

b) enter into this or any other contract with the Authority in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, or to his knowledge, unless before the Contract is made particulars of any such commission and the terms and conditions of any such agreement for the payment of it have been disclosed in writing to the Authority.

29.2 If the Contractor, his employees, agents or any sub-contractor, or anyone acting on his or their behalf, does any of the prohibited acts or commits any offence under the Prevention of Corruption Acts 1889 to 1916, with or without the knowledge of the Contractor, in relation to this or any other contract with the Authority, the Authority shall be entitled:-

a) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;

b) to recover from the Contractor the amount or value of any such gift, consideration or commission; and

c) to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, whether or not the Contract has been terminated.

29.3 In exercising its rights or remedies under this Condition, the Authority shall:-

a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act;

b) give all due consideration, where appropriate, to action other than termination of the contract, including (but without limitation to):

i) requiring the Contractor to procure the termination of a sub-contract where the prohibited act is that of a sub-contract; or

ii) requiring the Contractor to procure the dismissal of an employee (whether his own or that of a sub-contractor) where the prohibited act is that of such an employee.

30. UNLAWFUL DISCRIMINATION

30.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 and of any statutory instrument and Code of Practice made thereunder.

30.2 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Employment Equality (Sexual Orientation) Regulations 2003 and of any relevant Code of Practice.

30.3 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Employment Equality (Religion or Belief) Regulations 2003 and of any relevant Code of Practice.

30.4 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Disability Discrimination Act 1995 and of any statutory instrument and Code of practice made thereunder.

30.5 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Sex Discrimination Act 1975 and of any statutory instrument and Code of Practice made thereunder.

30.6 The Contractor shall take all reasonable steps to secure that all servants, employees or agents of the Contractor and all sub-contractors employed in the performance of the Contract do not unlawfully discriminate as set out in Condition 30.1, 30.2, 30.3, 30.4 and 30.5.

31. HEALTH AND SAFETY

31.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Services.

31.2 The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of the Services.

31.3 The Contractor shall inform all Staff engaged in the provision of Services at the Authority's Premises of all known health and safety hazards and shall instruct those Staff in connection with any necessary safety measures.

31.4 Whilst on the Authority's Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Personnel and other Persons working on those Premises.

31.5 The Contractor shall notify the Authority's Representative immediately in the event of any incident occurring in the performance of the Services on the Authority's Premises where that incident causes any death, personal injury or any damage to property which could give rise to death or personal injury.

31.6 The Contractor shall take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to health and safety, which may apply to Staff in the performance of the Services.

32. TRANSFER AND SUB-CONTRACTING

32.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval, in accordance with Condition 36. The Contractor shall indicate on Appendix G any sub-contractor he proposes to use in the delivery of the Services. Additional sub-contractors may only be added by the issue of a Variation in accordance with Condition 36.

32.2 On giving written notice to the Contractor of not less than thirty days, the Authority shall be entitled to assign any or all of its rights under the Contract to any contracting authority as defined in Regulation 3(1) of the Public Services Contracts Regulations

1993, provided that such assignment shall not materially increase the burden of the Contractor's obligations under the Contract.

32.3 The Contractor shall be responsible for the acts and omissions of his sub-contractors as though they were his own.

32.4 The Contractor shall not use the services of self-employed individuals without prior approval and the submission of a relevant tax exemption certificate.

33. SERVICE OF NOTICES AND COMMUNICATIONS

33.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

33.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter, or by facsimile transmission or electronic mail and confirmed by letter. Such letters shall be delivered by hand or sent prepaid by first class post, addressed to the other Party in the manner referred to in Condition 33.3. If the other Party does not acknowledge receipt of any such letter, facsimile transmission or item of electronic mail, and the relevant letter is not returned as undelivered, the notice or communication shall be deemed to have been given (three) working days after the day on which the letter was posted.

33.3 For the purposes of Condition 33.2, the address of each Party shall be:-

a) For the Authority: M

Address: West Lothian Council
Purchasing Services
West Lothian House
Almondvale Boulevard
Livingston
West Lothian EH54 6QG

Tel: 01506 77**** Fax: 01506 777301

E.Mail:

b) For the Contractor: _____

Address: _____

_____

For the attention of: _____

Tel: _____

Fax: _____

E.Mail: _____

33.4 Either Party may change its address for service by notice given in accordance with this Condition.

34. SEVERABILITY

34.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

35. WAIVER

35.1 The failure of either Party to exercise any right or remedy shall not constitute a waiver of the right or remedy.

35.2 No waiver shall be effective unless it is communicated to the other Party in writing.

35.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

36. VARIATION

36.1 The Contract shall not be varied unless such variation is agreed in writing by means of a Variation to Contract Form as set out at Appendix A.

36.2 In the event of an emergency the Authority shall have the right to vary the Contract by oral instructions given by the Authority's Representative, which shall be confirmed by the issue of a Variation to Contract Form to the Contractor within seven days.

36.3 The Authority shall have the right to vary the Services at any time, subject to the Variation being related in nature to the Services being provided, and no such Variation shall vitiate the Contract.

36.4 The Contractor may request a Variation provided that;

a) the Contractor shall notify the Authority's Representative in writing of any additional or changed requirement which it considers should give rise to a Variation within seven days of such occurrence first becoming known to the Contractor;

b) any proposed Variation shall be fully supported by a quotation as detailed in Condition 36.5.

36.5 The Contractor, within fourteen days of being requested by the Authority's Representative or where requesting a Variation pursuant to Condition 36.4, shall submit a quotation to the Authority, such quotation to contain at least the following information:

a) a description of the services together with the reason for the proposed Variation;

b) the price, where applicable;

c) details of the impact, if any, on other aspects of the Contract

36.6 The price for any Variation shall, unless otherwise agreed between the Parties, be calculated in the following order of precedence:-

a) using the Prices or Rates;

b) prices pro-rata to the Prices or Rates;

c) prices based on the Prices or Rates.

36.7 The Authority shall either approve or reject any Variation proposed by the Contractor.

36.8 In the event that the Contractor disputes any decision by the Authority to reject a proposed Variation, or contends that a proposed Variation is outstanding or continues to be required, the Contractor shall update the information contained in his quotation for the proposed Variation every Month and shall send the updated information to the Authority.

37. FORCE MAJEURE

37.1 Neither Party shall be liable to the other Party by reason of any failure or delay in performing its obligations under the Contract which is due to Force Majeure, where

there is no commercially practicable means available to the Party concerned to avoid such failure or delay.

37.2 If either Party becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that Party shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other Party of the period for which it estimates that the failure or delay will continue.

37.3 For the purposes of this Condition, "Force Majeure" means any event or occurrence which is outside the control of the Party and which is not attributable to any act or failure to take preventive action by the Party concerned, but shall not include any industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation.

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

38. TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY

38.1 The Authority may terminate the contract by written notice having immediate effect if:-

a) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, impacting adversely and materially on the performance of the Contract; or

b) where the Contractor is an individual or a firm the Contractor or any partner in the firm becomes bankrupt or has a receiving order or administration order made against him, or appears unable to pay a debt within the meaning of section 268 of the Insolvency Act 1986, or any similar event occurs under the law of any other jurisdiction within the United Kingdom; or

c) where the Contractor is a Company, the Contractor passes a resolution or the Court makes an order that the Contractor be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Contractor's business or any part of it; or the Contractor is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

38.2 The Authority may only exercise its right under Condition 38.1 (a) within six Months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify the Authority immediately when any change of control occurs.

39. TERMINATION ON DEFAULT

39.1 Either Party may terminate the Contract, or terminate the provision of any part of the Contract, by written notice to the other party with immediate effect if the other party is in default of any obligation under the Contract and:-

a) the other party has not remedied the default to the satisfaction of the party seeking to terminate the Contract within thirty days, or such greater period as may be specified by that party seeking to terminate the Contract, after service of written notice specifying the default and requiring it to be remedied; or

b) the default is not capable of remedy; or

c) the default is a fundamental breach of the Contract.

40. BREAK

40.1 The Authority shall have the right to terminate the Contract, or to terminate the provision of any part of the Contract, at any time by giving a minimum of three Months' written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

41. CONSEQUENCES OF TERMINATION

41.1 If the Authority terminates the Contract under Condition 39, or terminates the provision of any part of the Service under that Condition, and then makes other arrangements for the provision of the Services, the Authority shall be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period and any extension period provided that (a) the Authority provides to the Contractor as soon as reasonably practicable after service of notice of termination, a fully itemised and costed list together with documentary evidence that such costs have been reasonably incurred by the Authority as a direct result of such termination, (b) the Authority has taken immediate and reasonable steps to mitigate the costs of making those other arrangements and (c) such costs shall not exceed one million pounds (£1,000,000). Such recovery shall be the Authority's sole and exclusive remedy in respect of such termination of the Contract. Where the Contract is terminated under Condition 39, no further payment shall be payable by the Authority until the Authority has established the final cost of making those other arrangements being not more than nine months after the effective date of such termination.

41.2 If the Contractor terminates the Contract under Condition 39, or terminates the provision of any part of the Services under that Condition or if the Authority terminates the Contract, or terminates the provision of any part of the Contract, under Condition 40, the Authority shall reimburse the Contractor in respect of any loss, not including loss of profit, reasonably incurred by the Contractor as a result of the termination, provided that the Contractor takes immediate and reasonable steps, consistent with the obligation to provide the Services during the period of notice, to terminate all contracts with sub-contractors on the best available terms, to cancel all capital and recurring cost commitments, and to reduce Equipment and labour costs as appropriate.

41.3 For the purposes of Condition 41.2, the Contractor shall submit to the Authority's Representative, as soon as reasonably practicable after service of the notice, a fully itemised and costed list, with supporting evidence, of all losses incurred by the Contractor as a result of the termination of the Contract, or the termination of any part of the Contract, to be updated only in respect of ongoing costs each week until the Contract is terminated.

41.4 The Authority shall not be liable under Condition 41.2 to pay any sum which, when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the provision of the Services had been completed in accordance with the Contract.

42. Deleted.

43. DISPUTE RESOLUTION

CONCILIATION

43.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of, or in connection with, the Contract.

ADJUDICATION

43.2 If the dispute cannot be resolved by the Parties pursuant to Condition 43.1, the dispute may, by agreement between the Parties, be referred to adjudication pursuant to Condition 43.4.

43.3 The performance of the Services shall not cease or be delayed by the reference of a dispute to adjudication pursuant to Condition 43.2

43.4 The procedure for adjudication and consequential provisions relating to adjudication are as follows:-

a) A neutral adviser or adjudicator ("the Adjudicator") shall be chosen by agreement between the Parties or, if they are unable to agree upon the identity of the Adjudicator within fourteen days after a request by one Party to the other (provided that there remains agreement for adjudication), or if the Adjudicator agreed upon is unable or unwilling to act, either Party shall within fourteen days from the date of the proposal to appoint an Adjudicator or within fourteen days of notice to either Party that he is unable or unwilling to act, apply to the Centre of Dispute Resolution to appoint an Adjudicator.

b) The Parties shall within fourteen days of the appointment of the Adjudicator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre of Dispute Resolution to provide guidance on a suitable procedure.

c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by both the Authority's Representative and the Contractor's Representative.

e) Failing agreement, either of the Parties may invite the Adjudicator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties;

f) The Adjudicator shall decide the apportionment of costs of the adjudication. The decision of the Adjudicator shall be final and binding.

44. LAW AND JURISDICTION

44.1 This Contract shall be governed by and interpreted in accordance with Scots Law and shall be subject to the exclusive jurisdiction of the Scottish Courts.

45. Deleted.