# WEST LOTHIAN COUNCIL

# Conditions of Contract for the Supply of Goods

## SECTION 2: CONDITIONS OF CONTRACT


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**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 goods are delivered.

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

"Commencement Date" means the date on which the Contract Commences.

"Commencement of Full Operations" means the point in time when the Contractor becomes responsible for the provision of the Goods following the completion of the Setting up Operations. In the event that the Contractor's responsibility for the provision of the Goods 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 which, in the event of ambiguity or contradiction between Sections, shall be given precedence in the order listed:-

**a)** Section 1: Form of Agreement;
**b)** Section 2: Conditions of Contract;
**c)** Section 3: Specification;
**d)** 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 Goods.

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

"Goods" means all goods covered by the Purchase Order whether raw materials, processed materials or fabricated products.

"Goods" means the supplies set out in Section 3: Specification.
"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 Goods are delivered.

"Price" means a price entered in Section 4: Schedule of Prices and Rates.

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

"Purchase Order" means a paper Purchase Order or 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.

"Setting up Operations" means the activities the Contractor shall undertake between the Commencement Date and the Commencement of Full Operations.

"Site" means the area within the Premises in which the Goods are delivered.

"Staff" means all persons used by the Contractor to supply the Goods.

"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 _____ and shall expire _____ 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 otherwise lawfully terminated, or extended under Condition 3.2.

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

## 4. Deleted

## 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 Goods, 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 GOODS

### 6.1 TERMS AND CONDITIONS

These Conditions 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.

### 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 goods 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 right 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 goods 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 Goods, the means of communication with and access to the site, the supply and conditions affecting labour, the suitability of the Authority's Premises and the Equipment necessary for the supply of goods, 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 goods electronically via Pecos. It is therefore mandatory that all Contractors to the Authority agree, in writing, 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 goods 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.

**6.6 THE GOODS**

**6.6.1** The goods shall be to the reasonable satisfaction of the Authority and shall conform in all respects with the standards set out in Section 3: Specification.

**6.6.2** The goods shall conform in all respects with the requirements of any statutes, orders, regulations or byelaws from time to time in force.

**6.6.3** The goods shall be fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose made known to the Contractor by the Authority. The Authority relies on the skills and judgement of the Contractor in the supply of the Goods and the execution of the Order.

**6.6.4** Where a contract is for goods for rent or hire, the equipment must be in good condition and meet current legal requirements. The Authority reserves the right to reject any unsatisfactory hired or rented equipment or goods.

**6.6.5** In certain contracts, permission to execute part or any contract may be required from various bodies including the Authority's departments. Responsibility for obtaining any necessary permissions lies with the Contractor.

**6.6.6** The contract price must include all costs directly attributable to any necessary training of the Authority's staff.

**6.6.7** If required, samples must be provided free of charge and are returnable at the Contractor's cost. The Authority reserves the right to request further samples during the terms of the Contract and these may be tested to ensure that both specifications and standards are being maintained.

**6.6.8** The Contractor shall give representatives of the Authority access to his premises at all reasonable times in order that inspections may be made, samples obtained, if required, and vendor assessments may be carried out.

**6.6.9** The Authority must remain flexible and open to change in purchasing practices, if it can be established that such flexibility leads to cost savings for the Authority. The Authority is now able to gear its purchasing strategy around more than one contract option, should Contractors wish to offer what they feel is a more cost-effective package to the Authority.

Potential Contractors may quote in Section 4: Schedule of Prices and Rates any combination of prices provided the prices are clearly marked as to the particular option to which they relate.

Contractors may qualify each of their options, either by using Document 3, Part 2 : Proposed Amendments to the Contract Documents, attached to the tender or, preferably with their own written option presentation. The option presentation should clearly contain information as to the benefits to the

Authority of it utilising a contract other than a one-year fixed price contract. This information must clearly show the Contractor's view of annual savings to the Authority in using the preferred option(s) and the terms and conditions of sale which would apply to each option illustrated.

Contractors should identify any package which, in their opinion, could lead to cost savings to the Authority, over any time period which they thought was the optimum. The package would not necessarily cover every item on the contract. Contractors have the right to quote for sections of the contract, although the final decision may be influenced by the degree of contract coverage. Investigation of each package or combination thereof will be undertaken by the Authority.

**6.7 DELIVERY**

**6.7.1** The Goods shall be delivered to such place within West Lothian as the Authority directs.

**6.7.2** Goods shall be delivered at the Contractor's own expense, at such times and in such a manner as is specified in the Order and in such quantities as are stated. An advice note must accompany all deliveries. All Goods delivered shall be signed for at the time of delivery.

**6.7.3** The receipt of incoming goods to the Contractor or carrier is evidence only of physical receipt of a certain number of packages, bundles and so on and does not imply acceptance of the contents as satisfactory fulfilment of the order.

**6.7.4** Where any access to the premises is necessary in connection with delivery or installation, right of access shall be granted in accordance with Condition 13.

**6.7.5** The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Authority to release himself from any obligation to accept and pay for the Goods and/or to cancel all or part of the order therefor, in either case without prejudice to his other rights and remedies. In the event of continued default the Contract will be terminated in accordance with Condition 39.

**6.8 PROPERTY AND RISK**

**6.8.1** Property and risk in the Goods shall without prejudice to any of the rights or remedies of the Authority (including the Authority's rights and remedies under Condition 6.8 hereof) pass to the Authority at the time of delivery.

**6.9 DAMAGE IN TRANSIT**

**6.9.1** On dispatch of any consignment of the Goods the Contractor shall send to the Authority at the address for delivery of the Goods an advice note bearing the Order Number and specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. The Contractor shall, free of charge and as quickly as possible, either repair or replace (as the Authority shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Authority provided that:-

**a)** in the case of damage to such Goods in transit the Authority shall within thirty days of delivery give notice to the Contractor that the Goods have been damaged; or

**b)** in the case of non-delivery the Authority shall (provided that the Authority has been advised of the dispatch of the Goods) within

ten days of the notified date of delivery give notice to the Contractor that the Goods have not been delivered.

**6.10 INSPECTION, REJECTION AND GUARANTEE**

**6.10.1** The Contractor shall permit the Authority or his authorised representatives to make any inspections or tests he may reasonably require and the Contractor shall afford all reasonable facilities and assistance free of charge at his premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Authority of any rights or remedies in respect of the Goods.

**6.10.2** The Authority may, by written notice to the Contractor, reject any of the Goods which fail to meet the requirements specified herein. Such notice shall be given within thirty days of delivery to the Authority of the Goods concerned. If the Authority shall reject any of the Goods pursuant to this Condition the Authority shall be entitled:-

**a)** to have the Goods concerned as quickly as possible either repaired by the Contractor or (as the Authority shall elect) replaced by the Contractor with Goods which comply in all respects with the requirements specified herein; or

**b)** to obtain a refund from the Contractor in respect of the Goods concerned.

**6.10.3** The guarantee period applicable to the Goods shall be 12 months from putting into service or 18 months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Authority and the Contractor). If the Authority shall within such guarantee period or within 30 days thereafter give notice in writing to the Contractor of any defects in any of the Goods as may have arisen during such guarantee period under proper and normal use the Contractor shall without prejudice to any other rights and remedies which the Authority may have) as quickly as possible remedy such defects (whether by repair or replacement as the Authority shall elect) without cost to the Authority.

**6.10.4** Any Goods rejected or returned by the Authority as described in paragraphs 6.8.2 or 6.8.3 shall be returned to the Contractor at the Contractors risk and expense.

**6.11 LABELLING AND PACKAGING**

**6.11.1** The Goods shall be packed and marked in a proper manner and in accordance with the Authority's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the Order Number, the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Contractor shall indemnify the Authority and against all actions, suits, claims, demands, losses, charges, costs and expenses which the Authority may suffer or incur as a result of or in connection with any breach of this Condition.

**6.11.2** All returnable packing and pallets should be clearly marked with the word "Returnable" and the price charged if not returned. Such packing and pallets will not be paid for but will be stored for uplift by the Contractor.

**6.12 PATENTS AND INFORMATION**

**6.12.1** Except to the extent that the Goods are made up in accordance with designs furnished by the Authority, none of the Goods will infringe any patent,

trade mark, registered design, copyright or other right in the nature of industrial property of any third party and the Contractor shall indemnify the Authority against all actions, suits, claims, demands, losses, charges, costs and expenses which the Authority may suffer or incur as a result of or in connection with any breach of this Condition.

**6.12.2** All rights (including ownership and copyright) in any specifications, plans, drawings, patterns, models, designs or other material furnished to or made available to the Contractor by the Authority shall remain vested solely in the Authority and the Contractor shall not without the prior written consent of the Authority, use or disclose any such specifications, plans, drawings, patterns, models or designs or any information which the Contractor may obtain. The Contractor shall not refer to the Authority in any advertisement without the Authority's prior written agreement.

**6.13 AUTHORISED USERS**

**6.13.1** The Contractor shall supply the goods contracted for, to all or any of the service units of the Authority and to any external body notified to him for whom the Authority contracts on the terms and conditions specified in the Contract of which these terms and conditions of purchase form part. The Authority may notify the Contractor of any additional external body to whom deliveries should be made and of any external body to whom deliveries should no longer be made at any time during the subsistence of the Contract of which these terms and conditions of purchase form part.

The Contractor shall look solely to the external body concerned for payment and for the resolution of any dispute as to payment or other alleged breach of contract relating to Goods supplied or to be supplied to an external body. The Authority shall not be liable to the Contractor in any such dispute.

**6.14 HEADING**

**6.14.1** The headings to conditions shall not affect their interpretation.

## 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. Deleted

## 9. Deleted

## 10. STAFF

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

**10.2** The Contractor shall provide, at all times, the number of Staff required to fulfil his obligations under the Contract.

**10.3** Unless given prior Approval, the Contractor shall make the Key Staff available for the entire period needed to fulfil their part in the supply of the Goods, whilst they are employed or engaged by the Contractor.

**10.4** The Contractor, his employees and sub-contractors (if appropriate) are exempt from the provision of Section 4 (2) of the Rehabilitation of Offenders Act, 1974, by virtue of the Rehabilitation of Offenders Act, 1974, (Exceptions) Order, 1975. The Contractor shall ensure that all employees engaged in the service shall provide information in accordance with the said Act about convictions that would otherwise be spent under the provisions of the said Act. 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 costs of the Disclosure Scotland checks will be met by the Council.

**11. Deleted**

**12. USE OF AUTHORITY'S PREMISES**

**12.1 TOBACCO POLICY**

**12.1.1** Smoking is not permitted indoors in the Authority's Premises or in the Authority's vehicles.

**12.1.2** The Authority does not provide special smoking rooms/areas within its Premises.

**12.1.3** 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.

**12.1.4** 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 Goods 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 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 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 promptly return any pass 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 promptly return all passes to the Authority on completion or earlier termination of the Contract.

## 14. Deleted

## 15. STANDARDS

**15.1** Materials and processes used in connection with the provision of the Goods 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 standards.

## 16. Deleted

## 17. PROGRESS REPORTS

**17.1** The Contractor shall submit periodic returns detailing demand for contracted items. The frequency and content of these returns shall be mutually agreed prior to the commencement of the Contract.

**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 Goods.

**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 Goods, 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 Goods, 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 Goods, 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 goods provider whom the Authority has selected to tender for the future provision of the Goods.

**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 Goods by the Contractor in accordance with the terms of the Contract, the Authority shall pay 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 despatch of the Goods. Each invoice shall contain all appropriate references, a detailed breakdown of the Goods, 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 Goods provided in accordance with the Contract.

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

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

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

**19.8** Where Pecos is used to order Goods, 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 Goods, 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/Rates shall be fixed for the first 12 months of the Contract Period. The Authority shall consider applications for the amendment of prices/rates twice per year. Applications for amendment to prices/rates, approved by the Authority, shall apply on all transactions on or after -

a) 1 May of each year; and/or
b) 1 November of each year.

Applications for amendments to prices/rates must be lodged with the Authority at least one Month prior to the above dates.

**21.2** Any application for a price/rate amendment must be accompanied by written evidence from the manufacturer before any consideration will be given by the Authority to the request.

**21.3** A variation to the contract shall be issued under Condition 36 to confirm acceptance of any price/rate increase.

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

**21.5** Contractors shall advise of all price/rate reductions covered by the contract. Such reductions may be brought about by a number of reasons, e.g. overstocks, increased distributor discount, bulk purchases etc. Failure to inform the Authority of such reductions may lead to termination of the Contract in accordance with Condition 39. Non-contract items shall be similarly dealt with.

**21.6** The Authority reserves the right to benchmark prices/rates for goods with other suppliers at any time during the contract period. These goods may be bought from other suppliers other than the contracted supplier if it is considered to be in the best interests of 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.

**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. Deleted

## 24. SECURITY

**24.1** The Contractor shall take all measures necessary to comply with the provisions of any enactment relating to security which may be applicable to the Contractor in the supply of the Goods.

**24.2** The Contractor shall take all reasonable measures, by the display of notices or other appropriate means, to ensure that Staff have notice that all provisions referred to in Condition 24.1 shall apply to them and shall continue to apply to them, if so applicable, after the expiry or earlier termination of the Contract.

**24.3** Whilst on the Authority's Premises, Staff shall comply with all security measures implemented by the Authority in respect of Personnel and other Persons attending those Premises. The Authority shall provide copies of its written security procedures to the Contractor on request.

**24.4** 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.

**24.5** 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; and

**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 Goods:- and

**b)** 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, the Contractor shall ensure that Staff sign a confidentiality undertaking before commencing work in connection with the provision of the Goods. 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 2002 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 elsewhere in the United Kingdom:-

**b)** disclosing any information obtained from the Contractor:-

**i)** to any other department, office or agency 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 18.2 subject to the obligations imposed by Condition 18.3

**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 Goods supplied, 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 losses, 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 Goods supplied.

**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 supply of his Goods.

**31.3** The Contractor shall inform all Staff engaged in the provision of Goods 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 supply of the Goods 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 supply of the Goods and the return of any faulty Goods.

## 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.

**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 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 3 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:

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 made 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 within seven days, to the Contractor.

**36.3** The Authority shall have the right to vary the Goods at any time, subject to the Variation being related in nature to the Goods 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 goods 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 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 other 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 One 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 Goods 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 Contract under either of those Conditions, and then makes other arrangements for the provision of the Goods, 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. 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.

**41.2** 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, actually and 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 Goods 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, within twenty working days 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 Goods 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 supply of the Goods 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 mediation 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 a 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;

The Adjudicator shall reach a decision with 28 days of referral or such period as is agreed by the parties after the dispute has been referred.

The Adjudicator may extend the period of 28 days by up to 14 days with the consent of the party by when the dispute was referred.

**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