



Conditions of Contract for the Supply of Goods

Version Control

Version	Date	Responsible Officer	Change Description
10	22/10/2015	A.Bainbridge	Version Control added, Data Label added, Page Numbers added , Tobacco Policy removed and Smoke Free Policy added, Font Size Increased
11	21/03/2016	A.Bainbridge	Introduction – page numbers amended. New damages condition added at 6.7.6.
12	04/11/2016	A.Bainbridge	New discontinued goods condition added at 6.14. 32. Transfer and Sub-contracting: condition 32.5 added. New condition added: 38. Termination. Re-numbering of remaining conditions. Re-numbering of the following conditions to incorporate new numbering for Condition 40 (previously 39): 5.2b, 6.4.3, 6.5.3, 6.7.5, 10.2.3, 16.6b, 16.6c, 42.1 & 42.2. Contents pages and Interpretation updated as applicable. WLC Logo amended (19/01/17).
13	07/02/2018	A.Bainbridge	Council Logo update. CPI link update.
14	13/04/2018	C. Peden	Updated Interpretation section and Data Protection clause with wording from Legal.
15	14/11/2018	P. Walker	47.4 & 48.2 Data Protection Act updated to 2018.
16	13/10/2021	K.Anderson	Updates to section 45 – GDPR legislation description. Removed Deleted sections and adjusted numbering of remaining conditions.
17	18/05/2022	K Anderson	Prompt Payment clause added as per SPPN 2/2022

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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.

"Authority's Smoke Free Policy" means the smoke free policy of the Authority as such policy may be amended or updated from time to time. A copy of the current smoke free policy of the Authority is included in the Tender Submission – Smoke Free Policy and a copy of the Authority's current smoke free policy (as may be amended or updated from time to time) can be obtained from the Authority at any time by request to the Authority's HR Policy Manager. The Authority's current call centre telephone number is 01506 280000.

“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:

Instructions/Conditions of Contract

Tender Submission: Specification

Tender Submission: Schedule of Prices and Rates

Tender Submission: Form of Agreement

“Contractor” means the Person named as the Contractor in the Tender Submission: Form of Agreement or 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.

Option * delete as appropriate ["Data Processing Agreement" means an agreement in terms of the draft data processing agreement shown at [Appendix [] annexed hereto]

“Data Protection law” means the UK GDPR, the Data Protection Act 2018 and any associated regulations or guidance issued by the Information Commissioner as amended, replaced or superseded from time to time.

Option * delete as appropriate ["Data Sharing Agreement" means an agreement in terms of the draft data sharing agreement shown at Appendix [] annexed hereto.]

“E- Procurement” means any of the electronic procurement systems used by the Authority.

"FOI Legislation" means the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.

“Goods” means the supplies set out in the Tender Submission: Specification.

“Key Staff” means Staff identified by the Contractor in its tender submission in response to the question - About Your Company/Organisation: Key Staff.

"Line Item Detail" means a list of items including description, unit price and Value Added Tax rate applicable to the transaction.

“Month” means calendar month.

Option * delete as appropriate ["Non Disclosure Agreement" means an agreement in terms of the draft Non Disclosure Agreement shown at Appendix [] annexed hereto.]

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

“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 the Tender Submission: Schedule of Prices and Rates.

"Proposed Amendments to the Contract Documents" means any amendments proposed by the Contractor in the Tender Submission.

Option * delete as appropriate (only to be used when Option 2 at Condition 40 is selected).

["PRSA Appendix" means the relevant provisions of the Contractor's records management arrangements as assessed in the tender process together with any particular requirements of the Authority all as set out in Appendix [] annexed hereto.]

"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 E-Procurement.

"Rate" means a rate entered in the Tender Submission: 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.

"UK GDPR" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018."

"Variation" means a properly executed variation to the Contract in compliance with Condition 29.

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 in 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 on _____ 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. COMMENCEMENT OF FULL OPERATIONS

- 4.1** The Authority shall authorise the Commencement of Full Operations on the date specified in the Specification, if the Contractor has complied fully with the requirements set out in the Specification relating to the Setting up Operations.
- 4.2** 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 33.
- 4.3** 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.

5. CONDITIONS AFFECTING PROVISION OF GOODS

5.1 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 the Proposed Amendments to the Contract Documents.

5.2 ORDERS, DELIVERY NOTES AND INVOICES

- 5.2.1** All purchase orders, advance purchase orders, delivery notes and invoices shall not vary the Contract. The Conditions as set out in accordance with Condition 6.1 shall apply at all times.
- 5.2.2** The Contractor shall not supply any goods without receipt of a Purchase Order.
- 5.2.3** Failure by the Contractor to ensure receipt of a Purchase Order may delay payment in accordance with Condition 13.
- 5.2.4** 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 16 of this Contract and;
 - (ii)** 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.

5.3 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.

- 5.3.1** 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.
- 5.3.2** The Contractor shall be deemed to have satisfied itself 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.
- 5.3.3** 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.

5.4 ELECTRONIC PROCUREMENT

- 5.4.1** It is the Authority's intention to procure goods electronically via E-Procurement. It is therefore mandatory that all Contractors agree, to conduct business transactions with the Authority electronically via E-Procurement.
- 5.4.2** The degree of participation and the timescale to commence participation will be agreed in writing prior to the award of the Contract.
- 5.4.3** Any Contractor who gives this undertaking and does not commence participation within the agreed timescale will be in fundamental breach of Contract and the Contract may be terminated in accordance with Condition 33.

5.5 PURCHASE CARDS

Where the Authority intimates to the Contractor that it intends to procure Goods with Purchase Cards the following Conditions 6.5.1, 6.5.2 and 6.5.3 apply:-

- 5.5.1** It is mandatory that the Contractor's Purchase Card processing system has full Line Item Detail capability. Evidence of this capability will be required as part of the tender process.
- 5.5.2** Any Contractor whose Purchase Card processing system is not Line Item Detail enabled will be required to give an undertaking that within a mutually agreed timescale after the Commencement Date it will ensure that its Purchase Card processing system is Line Item Detail enabled.
- 5.5.3** Any Contractor who gives an undertaking in terms of Condition 6.5.2 hereof and whose Purchase Card processing system is not Line Item Detail enabled within said mutually agreed timescale will be in fundamental breach of contract and the Contract may be terminated in accordance with Condition 33.

5.6 THE GOODS

- 5.6.1** The Goods shall be to the reasonable satisfaction of the Authority and shall conform in all respects with the standards set out in the Specification.
- 5.6.2** The Goods shall conform in all respects with the requirements of any statutes, orders, regulations or byelaws from time to time in force.
- 5.6.3** 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 Purchase Order.

- 5.6.4** 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 for hire/hired or for rent/rented equipment or goods.
- 5.6.5** 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.
- 5.6.6** The Contract Price must include all costs directly attributable to any necessary training of the Authority's staff.
- 5.6.7** 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 term of the Contract and these may be tested to ensure that both specifications and standards are being maintained.
- 5.6.8** The Contractor shall give representatives of the Authority access to its premises at all reasonable times in order that inspections may be made, samples obtained, if required, and vendor assessments may be carried out.
- 5.6.9** 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 the 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 completing the Proposed Amendments to the Contract Documents, 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.

5.7 DELIVERY

- 5.7.1** The Goods shall be delivered to such place within West Lothian as the Authority directs.
- 5.7.2** Goods shall be delivered at the Contractor's own expense, at such times and in such a manner as is specified in the Purchase Order and in such quantities as are stated. 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 Purchase Order Number and specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. All Goods delivered shall be signed for at the time of delivery.
- 5.7.3** 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.
- 5.7.4** Where any access to the Authority's Premises is necessary in connection with delivery or installation, right of access shall be granted in accordance with Condition 12.
- 5.7.5** 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 itself 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 its other rights and remedies. In the event of continued default the Contract will be terminated in accordance with Condition 33.

[Delete as appropriate]

- 5.7.6** If the Goods remain undelivered in whole or in part at any time after the specified time on the date of delivery, the Authority will be entitled to payment from the Contractor, of liquidated damages, payable within 30 days of the date of the invoice issued, in respect of all proper and reasonable losses arising out of the late delivery of the Goods.

Interest will be payable on any invoice which remains unpaid in whole or in part on the due date from the due date until the date of payment in full at 1% above the Bank of England base rate from time to time in force.]

5.8 PROPERTY AND RISK

- 5.8.1** 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 6.7 hereof)
pass to the Authority at the time of delivery.

5.9 DAMAGE IN TRANSIT

5.9.1 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.

5.10 INSPECTION, REJECTION AND GUARANTEE

5.10.1 The Contractor shall permit the Authority or his authorised representatives to make any inspections or tests it may reasonably require and the Contractor shall afford all reasonable facilities and assistance free of charge at its 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.

5.10.2 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.

5.10.3 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.

- 5.10.4** Any Goods rejected or returned by the Authority in terms of the Contract shall be returned to the Contractor at the Contractor's risk and expense.

5.11 LABELLING AND PACKAGING

- 5.11.1** 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 Purchase 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 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.

- 5.11.2** 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.

5.12 PATENTS AND INFORMATION

- 5.12.1** 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.

- 5.12.2** 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.

5.13 AUTHORISED USERS

- 5.13.1** 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 it 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.

5.14 DISCONTINUED GOODS

5.14.1 In the event that any particular item or model of the Goods is discontinued by the manufacturer or becomes obsolete during the term of the Contract either:

- (a)** the Contractor may make a request in writing to the Authority to specify an alternative item or model. Such written request shall contain a statement confirming that the manufacturer has discontinued the item or model together with such other supporting information as may reasonably be required by the Authority; or
- (b)** The Authority may require that any discontinued item or model be replaced by the Contractor in accordance with the Authority's alternative specification.
If the Contractor cannot provide a suitable alternative, without prejudice to any other remedies available, the Authority reserves the right to purchase the Goods required from an alternative source.

5.14.2 Any alternative item or model of the Goods provided by the Contractor must be equal to or better than the discontinued Goods and be compatible with the original specification. The alternative Goods shall be supplied at either the same price as the discontinued Goods or a reduced price, unless otherwise agreed in accordance with the terms of the Contract.

5.14.3 The Authority reserves the right to request a sample of the proposed alternative for evaluation purposes prior to acceptance. During any period of notification and acceptance, should the Contractor receive an order for the discontinued Goods, they must immediately contact the Authority advising of the situation and ensure that any alternative is suitable to and agreed by the Authority prior to dispatch.

6. CONTRACTOR'S STATUS

- 6.1** 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.

7. STAFF

- 7.1.1** All Staff shall possess the qualifications, licences and competence appropriate to the tasks for which they are employed.
- 7.1.2** The Contractor shall provide, at all times, the number of Staff required to fulfil its obligations under the Contract.
- 7.1.3** 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.

7.2 Protection of Children and Vulnerable Groups

- 7.2.1** The Contractor shall ensure, that all Staff, sub-contractors and others who carry out or will carry out Regulated Work in performance of the Contract, are registered members of the Protection of Vulnerable Groups Scheme for the type of work which they carry out or will carry out in performance of the Contract.
- 7.2.2** Where the Authority is permitted to request provision of or sight of a disclosure record under Section 67 of the Protection of Vulnerable Groups (Scotland) Act 2007 and The Protection of Vulnerable Groups (Scotland) Act 2007 (Unlawful Requests for Scheme Records) (Prescribed Circumstances) Regulations 2010 or any other legislation or regulations, the Contractor shall disclose such record to the Authority forthwith upon request where the Contractor has the consent of the individual who is the subject of the record to do so. Where said individual's consent is not given or where for any other reason any such record is not provided forthwith to the Authority, the Authority reserves the right, without prejudice to its other legal remedies, to require such individual to be withdrawn immediately from performance of the Contract or any services relating to it.
- 7.2.3** The failure by the Contractor to comply with Conditions 9.2.1 and 9.2.2 will be a fundamental breach of the Contract in terms of Condition 33 and the Authority may terminate the Contract in accordance with Condition 33.

8. USE OF AUTHORITY'S PREMISES

8.1 SMOKE FREE POLICY

- 8.1.1** Smoking is not permitted indoors in the Authority's Premises or in the Authority's vehicles.
- 8.1.2** The use of e-cigarettes or other similar products designed to replicate the behaviour of smoking without the use of tobacco is not permitted in the Authority's premises or in the Authority's vehicles.
- 8.1.3** Smoking is not permitted at entrances/exits or surrounding grounds or the Authority's premises.
- 8.1.4** The use of e-cigarettes or other similar products designed to replicate the behaviour of smoking without the use of tobacco is not permitted at the entrances/exits or surrounding grounds of the Authority's premises.
- 8.1.5** The Authority does not provide special smoking rooms/areas within its Premises.
- 8.1.6** Contractors, Staff, sub-contractors and sub-contractors' staff are not allowed to smoke in vehicles used or to be used for the purpose of the Contract. Contractors shall comply with and shall procure that all Staff, sub-contractors and sub-contractors' staff comply with the Smoking, Health and Social Care (Scotland) Act 2005 and any regulations, orders or statutory instruments made thereunder.
- 8.1.7** The Contractor shall comply with the Authority's Smoke Free Policy at all times.

9. RIGHT OF ACCESS TO THE AUTHORITY'S PREMISES

- 9.1** Where the Goods are to be delivered on the Authority's Premises, the Authority shall grant to the Contractor reasonable access to the Site.
- 9.2** 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.
- 9.3** 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.

- 9.4** 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.
- 9.5** 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.
- 9.6** 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.

10. STANDARDS

- 10.1** Materials and processes used in connection with the provision of the Goods shall be in accordance with the standards set out in Tender Submission: Specification.
- 10.2** 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.

11. PROGRESS REPORTS

- 11.1** 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 Date.
- 11.2** The submission and receipt of progress reports shall not prejudice the rights of either Party under the Contract.

12. RE-TENDERING AND HANDOVER

12.1 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.

12.2 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;
- c)** 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;
- d)** 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.

12.3 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 11.2 in confidence, not to 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 not to use it for any other purpose.

12.4 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 11.2.

12.5 The Contractor shall not:-

- a)** at any time during the Contract Period, including any extension of the original Contract Period, move any persons

in its 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.

12.6 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 12.5, 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 it to remedy the breach in terms of Condition 24; and
- c)** if the Contractor has not remedied the breach to the satisfaction of the Authority's Representative following notice in terms of Condition 24 to terminate the Contract by reason of the default of the Contractor, in accordance with Condition 24.

12.7 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.

12.8 For the purpose of access to the Site in accordance with Condition 12.7, 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.

12.9 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.

12.10 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 Goods subject to the necessary approvals being granted under Data Protection law. 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.

13. PAYMENT AND VALUE ADDED TAX

- 13.1** 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 the Tender Submission: Schedule of Prices and Rates.
- 13.2** 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.
- 13.3** Subject to the following proviso, payment by Banker's Automated Clearing Services 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. The foregoing is subject to the following proviso:- Where the Authority has intimated its intention to purchase Goods with Purchase Cards in terms of Condition 6.5 hereof, payment by Purchase Card shall be made to the Contractor at the time the Goods are purchased.
- 13.4** 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.
- 13.5** The Authority may reduce payment in respect of any Goods which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.
- 13.6** Where Purchase Cards are used to obtain Goods, Condition 13.2 will not apply and payment for these Goods will be made to the Contractor by the Authority's Purchase Card Provider.
- 13.7** Where E-Procurement is used to order Goods, payment may be made by either method set out in Condition 13.3.

14. PAYMENTS OF SUB-CONTRACTORS

- 14.1 Where the Contractor enters into a sub-contract for the provision of any part of the Goods, that Contractor shall ensure that a provision is included which:
- 14.1.1 requires the payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Authority has made payment to the Contractor in respect of the Contract and the sub-contractor's invoice relates to the Contract then, to that extent, the invoice must be treated as valid and, provided the Contractor is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Contractor, payment must be made to the sub-contractor without deduction:
- 14.1.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Authority and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Authority; and
- 14.1.3 in the same terms as that set out in this condition 14.1 (including for the avoidance of doubt this Condition 14.1.3) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and sub-contractor as the case may be.
- 14.1.4 LATE PAYMENT OF INVOICES. Suppliers to the Authority, including sub-contractors, are requested to address complaints regarding late payments of invoices to, in the first instance, the addressee of the invoice and, in the second instance to the Corporate Procurement Manager, West Lothian Council, CPU@westlothian.gov.uk.

15. PRICE ADJUSTMENT

[Option 1 * delete as appropriate

- 15.1 Subject to the terms of Condition 15.4 hereof, Prices and Rates are fixed for the Contract Period including any extensions of the

Contract Period and cover delivery of the Goods to such premises within West Lothian as the Authority may direct.]

[Option 2 * delete as appropriate

15.1 In this clause:-

the "Review Date" means 1 April in each year

"CPI" means the Consumer Prices Index – All Items (CPI) compiled by the Office for National Statistics which can be viewed at <https://www.ons.gov.uk/economy/inflationandpriceindices>

The Authority will review the Prices or Rates (as applicable) with effect from the Review Date for contracts that have been in operation prior to 1 January of that year. The Prices or Rates (as applicable) shall be increased or decreased by the percentage equal to the percentage increase or decrease in the CPI calculated in relation to a period of 12 elapsed months prior to and including the December preceding the Review Date (the "Percentage Increase or Decrease"). The Percentage Increase or Decrease shall be calculated by using the CPI figure for the month of December (available in January) preceding the Review Date. The reviewed Prices or Rates (as applicable) shall be recorded as a Variation.]

[Option 3 * delete as appropriate

15.1 Subject to the terms of Condition 15.4 hereof, Prices and Rates are fixed for the first [TO BE COMPLETED] years of the Contract and cover delivery of the Goods to such premises within West Lothian as the Authority may direct.

15.2 In this Condition:-

the "Review Date" means 1 April [YEAR TO BE COMPLETED].

"CPI" means the Consumer Prices Index – All Items compiled by the Office for National Statistics which can viewed at <https://www.ons.gov.uk/economy/inflationandpriceindices>

The Authority will review the Prices or Rates (as applicable) with effect from the Review Date. The Prices or Rates (as applicable) shall be increased or decreased by the percentage equal to the percentage increase or decrease in the CPI calculated in relation to a period of 12 elapsed months prior to and including the December preceding the Review Date (the "Percentage Increase or Decrease"). The Percentage Increase or Decrease shall be calculated by using the CPI figure for the month of December (available in January) preceding the Review Date. The reviewed Prices or Rates (as applicable) shall be recorded as a Variation.]

15.3 Prices or Rates (as applicable) changes shall not be applied until thirty days from the Review Date.

- 15.4** In the event that the Contractor wishes to make any seasonal discounts, short term special offers or other offers or discounts available to the Authority which will result in a reduction in the Contract Price, Price or Rate and the Authority wishes to accept such discounts or offers, the reduced Contract Price, Price or Rate shall apply without the need for a Variation.
- 15.5** 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 suppliers other than the contracted supplier if it is considered to be in the best interests of the Authority.

16. RECOVERY OF SUMS DUE

- 16.1** 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.
- 16.2** The Authority shall give at least twenty-one days' notice in writing to the Contractor of its intention to make a deduction under Condition 16.1, giving particulars of the sum to be recovered and the contract under which the payment arises in respect of which the deduction is to be made.
- 16.3** 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.

17. SECURITY

- 17.1** 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.
- 17.2** 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 17.1 shall apply to them and shall continue to apply to them, if so applicable, after the expiry or earlier termination of the Contract.
- 17.3** 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.
- 17.4** 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.

17.5 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 its 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.

18. CONFIDENTIALITY

18.1 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.

18.2 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.

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 a format acceptable to the Authority.

18.3 Conditions 18.1 and 18.2 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.

18.4 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

18.5 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.

- 18.6** 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.
- 18.7** The obligations imposed by this Condition shall continue to apply after the expiry or termination of the Contract.

19. PUBLICITY

- 19.1** 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.

20. RIGHT OF AUDIT

- 20.1** 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.
- 20.2** 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.

21. INDEMNITY AND INSURANCE

- 21.1** 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:- (a) its negligence or default, (b) the negligence or default of its Staff or sub-contractors, or (c) any circumstances within its or its Staff or sub-contractors' control.
- 21.2** 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 15.1
- 21.3** The Contractor shall hold employer's liability insurance in accordance with any legal requirement for the time being in force.
- 21.4** Subject to the following proviso, the Contractor shall produce to the Authority, upon request completed certificates of insurance or a signed and dated letter from its insurance broker as detailed in Tender Submission: Insurance Requirement. 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 regulated and authorised to conduct business by the Financial Conduct Authority or equivalent. The foregoing is subject to the following proviso:-

In the event that said completed certificates of insurance or letter from the Contractor's insurance broker are not in place at the time of tendering, such completed certificates of insurance or letter from the Contractor's insurance broker shall be produced to the Authority on request prior to the Commencement Date.

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

22. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

- 22.1** The Contractor shall not do (and warrants that in entering into 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 or Personnel 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 it or on its behalf, or to its 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.

- 22.2** If the Contractor or (with or without the knowledge of the Contractor), its employees, agents or any sub-contractor, or anyone acting on its or their behalf, does any of the prohibited acts or commits any offence under the Bribery Act 2010 or breaches the Bribery Act 2010 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.

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

23. UNLAWFUL DISCRIMINATION

- 23.1** The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 and of any statutory instrument and Code of Practice made thereunder.
- 23.2** 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 23.1.

24. HEALTH AND SAFETY

- 24.1** The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the Goods supplied.
- 24.2** 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 Goods.
- 24.3** The Contractor shall inform all Staff engaged in the provision of Goods of all known health and safety hazards and shall instruct those Staff in connection with any necessary safety measures.
- 24.4** 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 the Authority's Premises.
- 24.5** The Contractor shall notify the Authority's Representative immediately in the event of any incident occurring in the supply of the Goods where that incident causes any death, personal injury or any damage to property which could give rise to death or personal injury.

- 24.6** 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.

25. TRANSFER AND SUB-CONTRACTING

- 25.1** 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 22. The Contractor shall indicate in Tender Submission: Proposed Sub-Contractors any sub-contractor he proposes to use in the supply of the Goods. Additional sub-contractors may only be added by the issue of a Variation in accordance with Condition 22.
- 25.2** 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 Contracts (Scotland) Regulations 2012 , provided that such assignment shall not materially increase the burden of the Contractor's obligations under the Contract.
- 25.3** The Contractor shall be responsible for the acts and omissions of his sub-contractors as though they were his own.
- 25.4** The Contractor shall not use the services of self-employed individuals without prior approval and the submission of a relevant tax exemption certificate.
- 25.5** The Contractor shall also include in every sub-contract:
- 25.5.1** a right for the Contractor to terminate that sub-contract if the relevant subcontractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in condition 31.1 occur; and
 - 25.5.2** a requirement that the sub-contractor includes a provision having the same effect as 25.5.1 above in any sub-contract which it awards. In this condition 25.5.2, 'sub-contract' means a contract between two or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract

26. SERVICE OF NOTICES AND COMMUNICATIONS

- 26.1** 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.
- 26.2** 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. Such letters shall be delivered by hand or sent by first class recorded delivery post, addressed to the other Party named in the Service of Notices and Communications

document of Public Tenders Scotland. 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.

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

27. SEVERABILITY

- 27.1** 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.

28. WAIVER

- 28.1** The failure of either Party to exercise any right or remedy shall not constitute a waiver of the right or remedy.
- 28.2** No waiver shall be effective unless it is communicated to the other Party in writing.
- 29.3** 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.

29. VARIATION

- 29.1** The Contract shall not be varied unless such variation is made in writing by means of a Variation to Contract Form as set out in the tender document.
- 29.2** 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.
- 29.3** 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.
- 29.4** The Contractor may request a variation to the Contract 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 29.5

29.5 The Contractor, within fourteen days of being requested by the Authority's Representative or where requesting a variation of the Contract pursuant to Condition 29.4, 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.

29.6 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.

29.7 The Authority shall either Approve or reject any variation of the Contract proposed by the Contractor.

29.8 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 its quotation for the proposed Variation every Month and shall send the updated information to the Authority.

30. FORCE MAJEURE

30.1 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.

30.2 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.

30.3 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.

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

31. TERMINATION

31.1 The Authority may terminate the Contract in the event that:

- (a)** the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;
- (b)** the Contractor has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or
- (c)** the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

In this Condition, 'the Treaties' has the meaning given in the European Communities Act 1972.

32.2 The Authority may also terminate the Contract in the event of a failure by the Contractor to comply in the performance of the Contract with legal obligations in the fields of environmental, social and employment law.

33.3 Termination under Condition 31.1, 31.2, 32 or 33 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Authority and shall not affect the continued operation of Conditions 25 (Confidentiality) and 27 (Right of Audit).

32. TERMINATION ON INSOLVENCY

32.1 The Authority may terminate the Contract by written notice having immediate effect if:-

- a) 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
- b) 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.

33. TERMINATION ON DEFAULT

33.1 Either Party may terminate the Contract or terminate the provision of any part of the Goods 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.

34. BREAK

34.1 The Authority shall have the right to terminate the Contract, or to terminate the provision of any part of the Goods, 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 Goods to be provided by the Contractor during the period of extension.

35. CONSEQUENCES OF TERMINATION

35.1 If the Authority terminates the Contract under Condition 40, or terminates the provision of any part of the Goods under that Condition, and then makes other arrangements for the provision of the Goods or any part thereof, 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 reasonable steps as soon as reasonably practicable to mitigate the costs of making those other arrangements and (c) such costs shall not exceed one million pounds (£1,000,000) Sterling. Such recovery shall be the Authority's sole and exclusive remedy in respect of such termination of the Contract or termination of the provision of any part of the Goods. Where the Contract or provision of any part of the Goods is terminated under Condition 33, no further payment shall be payable by the Authority until the Authority has established the final cost of making those other arrangements provided that the Authority establishes said final cost not more than nine months after the effective date of such termination.

- 35.2** If the Contractor terminates the Contract under Condition 33, or terminates the provision of any part of the Goods under that Condition or if the Authority terminates the Contract, or terminates the provision of any part of the Goods, under Condition 34, 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 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.
- 35.3** For the purposes of Condition 35.2, 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 the provision of any part of the Goods to be updated only in respect of ongoing costs each week until the Contract or provision of any part of the Goods is terminated.
- 24.4** The Authority shall not be liable under Condition 35.2 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.

36. DISPUTE RESOLUTION

CONCILIATION

- 36.1** 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

36.2 If the dispute cannot be resolved by the Parties pursuant to Condition 36.1, the dispute may, by agreement between the Parties, be referred to adjudication pursuant to Condition 36.4.

36.3 The supply of the Goods shall not cease or be delayed by the reference of a dispute to adjudication pursuant to Condition 36.4.

36.4 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 Chartered Institute of Arbitrators (Scottish Branch) 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 Chartered Institute of Arbitrators (Scottish Branch) to provide guidance on a suitable procedure;

The Adjudicator shall reach a decision within 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 whom 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.

37. LAW AND JURISDICTION

- 37.1** 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.

38. DATA PROTECTION

- 38.1** The Contractor agrees to ensure that it will at all times comply with the provisions of Data Protection law* in storing and processing personal data and all personal data acquired from the Authority will be returned on request. The Contractor agrees to indemnify the Authority against all actions, costs, claims, damages or expenses incurred by the Authority or for which the Authority may become liable due to any failure by the Contractor, its employees, agents, servants, volunteers or others for whom it is responsible in law, to comply with Data Protection law.

39. FREEDOM OF INFORMATION

The Contractor acknowledges that the Authority is subject to the FOI Legislation. The Contractor shall provide all such assistance as the Authority may require to enable it to comply with the FOI Legislation.

40. PUBLIC RECORDS (SCOTLAND) ACT 2011

[Option 1* delete as appropriate]

The Contractor acknowledges that pursuant to the Public Records (Scotland) Act 2011, the Authority must prepare and maintain a records management plan ("Records Management Plan") setting out proper arrangements for the management of the Authority's public records (as that term is defined by section 3(1) of the Public Records (Scotland) Act 2011) and ensure that its public records are managed in accordance with its Records Management Plan. In so far as any public records will be created by or on behalf of the Contractor or otherwise come into the possession of the Contractor in carrying out the Authority's functions during the Contract and/or pursuant to the Contract, the Contractor shall comply at all times with the Authority's Records Management Plan (as the same may be updated from time to time) and provide all such assistance as the Authority may require to enable it to comply with the Public Records (Scotland) Act 2011.]

[Option 2 *delete as appropriate]

- 40.1 In this Condition 47, the term "Act" shall refer to the Public Records (Scotland) Act 2011; "Records Management Plan" means the plan prepared by the Authority and approved by the Keeper of the Records of Scotland under section 1 of the Act, "Records Management Provisions" refers to the policies, procedures and arrangements for the management and preservation of the records created by the Contractor further to this Agreement, as such policies, procedures and arrangements are more fully set out in the PRSA Appendix; and "Contractor's Retention Schedule" refers to those parts of the Records Management Provisions relating to how long particular records or classes of records created or managed by the Contractor are to be retained for after they have come to the end of their normal operational use.
- 40.2 The Contractor shall, for the duration of this Contract provide the Authority with all assistance reasonably requested by the Authority to assist the Authority in complying with its obligations under the Act and with the Authority's Records Management Plan where such compliance is in respect of records created or to be created by the Contractor on behalf of the Authority in terms of this Contract. This assistance will be at no cost to the Authority.
- 40.3 The Contractor shall, for the duration of this Contract and, in respect of records created during the term of this Contract for the duration set out for that class of record in the Contractor's Retention Schedule after the termination or expiry of this Contract, comply with the Records Management Provisions set out in the PRSA Appendix . [if applicable: The Contractor shall also comply with these provisions, for the period described, in relation to any pre-existing records which are transferred to the Contractor pursuant to this Contract.
- 40.4 At the end of the relevant period set down in the Contractor's Retention Schedule for a particular record or class of records, then if the Contractor's Retention Schedule for that record or class of records, lists the final disposal of the record or class of record as "Pass to Council", the Contractor shall offer to transfer the records in question to the Council, such transfer to include full ownership of the records (including transfer of the status of data controller of any personal data as defined in the Data Protection law contained in the records, full beneficial ownership and transfer of any intellectual property rights relating to the records.) The transfer shall be at no cost to the Authority. The Contractor shall ensure that all relevant indices and any other relevant information reasonably required to locate individual items within the records, including metadata and database schema, are also offered to the Authority on the same terms.
- 40.5 If the Contractor shall become bankrupt (whether voluntary or compulsorily), unable to pay its debts, insolvent or make any arrangements with its creditors, or if any resolution is adopted for the winding up of the Contractor, or if a receiver, administrator or administrative receiver is appointed over the whole or any part of its assets or if the Contractor goes into liquidation (whether voluntary or

compulsorily) otherwise than for the purposes of amalgamation or reconstruction or any form of execution is levied upon its assets, then immediately on the occurrence of any of these events, the records which would, in terms of Condition 40.4, fall to be offered to the Authority at the time stipulated in the Contractor's Retention Schedule, shall be deemed to be held on trust by the Contractor on behalf of the Authority. The Contractor shall thereafter, if and when so required by the Authority, transfer the records in question to the Authority, such transfer to be on the same terms as would apply to a transfer made in terms of Condition 40.4

41 LEGISLATION/LAW/BLACKLISTING

- 41.1** The Contractor at, its own expense, shall, at all times, comply with and ensure that the following are complied with:- all obligations imposed by any statute or enactment or lawfully directed or required by any competent authority or court of competent jurisdiction.
- 41.2** Without prejudice to the foregoing generality, the Contractor must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Law by unlawfully processing personal data in connection with any Blacklisting Activities. Breach of this Condition is a fundamental breach of the Contract which shall entitle the Authority to terminate the Contract with immediate effect. For the avoidance of doubt, "Blacklisting Activities" shall include any activities prohibited in said Employment Relations Act 1999 (Blacklists) Regulations 2010 or in section 137 of the said Trade Union and Labour Relations (Consolidation) Act 1992.