



**Version 3.0**

**Perth & Kinross Council  
Standard Terms and Conditions  
Supply of Services  
(Non-Construction and Non Consultancy)**

## **Guidance Note to Users**

These terms and conditions should be selected where the purchasing officer is seeking offers for the supply of non-consultancy services. These terms and conditions should be used in un-amended form, unless otherwise approved by the Head of Legal Services and the Corporate Procurement Manager.

These conditions are not suitable for use for:

1. The purchase of services, being any services from consultancy, ongoing service provision or one for which registration is required with the Care Inspectorate or other statutory regulator;
2. The purchase of IT services;
3. The supply and fit of goods in respect of or ancillary to a public works contract;
4. Any public works contract; or
5. Any services contract that would fall within the meaning of construction operations in terms of section 104 and 105 of the Housing Grants, Construction and Regeneration Act 1996.

This guidance note is for internal use by Perth & Kinross Council employees and does not form part of the Contract between the Supplier and the Council.

**Perth & Kinross Council**  
**Standard Terms and Conditions**  
**Supply of Services (Non-Construction and Non Consultancy)**

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

**1. Definitions**

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

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

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

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

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

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

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

**"Council"** means Perth & Kinross Council, a local authority constituted under section 2 of the Local Government etc (Scotland) Act 1994 and having its principal offices at 2 High Street, Perth, PH1 5PH;

**"Data Controller"** has the meaning given in the Data Protection Laws.

**"Data Processor"** has the meaning given in the Data Protection Laws.

**"Data Protection Laws"** means any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a

relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 1998 and any statutory modification or re-enactment thereof and the GDPR.

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

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

**"GDPR"** means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

**"Good Industry Practice"** means that degree of skill, care, prudence and foresight and operating practice or generally recognised industry or service standard which:

- (a) would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Supplier; or
- (b) where there is no equivalent type of undertaking, would be expected from a prudent and experienced person in order to implement the specific task set out in the Contract.

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

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

**"Procurement Regulations"** means The Procurement (Scotland) Regulations 2016, The Public Contracts (Scotland) Regulations 2015, the Local Government (Scotland) Act 1973 and any other legislation governing or regulating the purchase of goods, supplies and services by local authorities constituted under the Local Government etc (Scotland) Act 1994;

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

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

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

**'Premises'** means the location where the services are to be performed, as specified in the Purchase Order;

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

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

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

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

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

**"Supervisory Authority"** has the meaning given in the Data Protection Laws;

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

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

## **2. The Services**

2.1 The Supplier shall supply the Services to the Council from the Commencement Date until the Completion Date. The Services shall be performed to the requirements set out in the Specification and shall be of performed with the reasonable skill and care that would be expected of a competent professional professing to have knowledge in the area of expertise to which the Services relate.

- 2.2 The Council has made the Supplier aware of the Council's requirements in the Invitation to Tender, and the Council is relying on the skill, care and judgement of the Supplier in supplying the Services.
- 2.3 Notwithstanding the terms of clauses 2.1 and 2.2, the Supplier in supplying the Services shall comply with:
- (a) all relevant law;
  - (b) all applicable statutory consents;
  - (c) the applicable provisions of this Contract;
  - (d) Good Industry Practice; and
  - (e) Any applicable requirement of regulatory bodies

### **3. The Price and Payment**

- 3.1 The price payable by the Council shall be the price set out in the Suppliers Tender, as adjusted where necessary by the Award Letter (and where applicable the Purchase Order) and shall be payable in accordance with clauses 3.2 and 3.2A below. No increases in the price shall be permissible except in accordance with this Contract. The price submitted by the Supplier shall include all fees, costs and expenses (including travel) and no additional allowance shall be payable by the Council in this respect (except where otherwise specified in the Invitation to Tender). Where the Contract Notice, Specification and/or Invitation to Tender specify that the Contract is made on a call off or as required basis, the Supplier expressly acknowledges that there is no guarantee of any orders for the Services being instructed by the Council.
- 3.2 The Supplier shall invoice the Council on or after the Services have been delivered to the Council in accordance with clause 4.1 (subject to the provisions of clause 3.A1) setting out the price for the Services as set out in the Tender. All invoices must quote the Purchase Order number. The Council reserves the right to reject or withhold payment where the Supplier fails to comply with the terms of this clause.
- 3.2A Where the Services are of an ongoing nature and it is expressly set out in the Invitation to Tender, the Supplier shall be entitled to invoice the Council on the interim basis as set out in the Invitation to Tender, or failing which at intervals that may be agreed between the Council and the Supplier. At no time shall the Supplier be entitled to payment in advance under this Contract.
- 3.3 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 3.4 Where the Council has specified within the Invitation to Tender that they can place multiple orders for the Services with the Supplier under this Contract, the terms of the Contract shall apply mutatis mutandis to

each order placed with the Supplier, and the terms of the Contract shall be construed accordingly.

- 3.5 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Council.
- 3.6 Notwithstanding Condition 21 (Assignment and sub-contracting) of this Contract the Supplier may assign to another person (an "assignee") the right to receive payment of the Price or any part thereof due to the Supplier under this Contract subject to (i) deduction of sums in respect of which the Council exercises the right of recovery under Clause 19 (Set off and Retention of Sums due) of this Contract and (ii) all the related rights of the Council under this Contract in relation to the recovery of sums due but unpaid. The Supplier shall notify or procure that any assignee notifies the Council of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Council to redirect payments or invoices accordingly. In the absence of such notification the Council shall be under no obligation to vary the arrangements for payment of the Price or for handling invoices.

### **3A. Inspection of Premises and Nature of Services**

- 3A.1 The Supplier is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and Premises. The Council shall, at the request of the Supplier, grant such access as may be reasonable for this purpose.

### **4. Delivery, Performance and Manner of Carrying out Services**

- 4.1 The Services shall be delivered to or performed at the place specified within the Specification, or failing which the Award Letter. If neither is specified, the Services shall be delivered to or performed at such address and at such intervals as is specified in writing by the Council to the Supplier in clause 4.3.
- 4.2 The time of performance of the Services shall be of the essence and failure to perform the Services by the Completion Date (or where the Services are of a continuing nature, failure to perform the Services for the period stated in the contract), or any milestone dates set out in this Contract shall amount to a material breach of contract. Such failure shall entitle the Council to terminate the contract without compensation (or payment or acceptance of the Services being required) being payable to the Supplier, and such right is without prejudice to any other such remedy as the Council may have under this Contract.

- 4.3 The Council may by written notice require the Supplier to execute the Services in such order as the Council may decide. In the absence of such notice the Supplier shall submit such detailed programmes of work and progress reports as the Council may from time to time require.
- 4.4 The Supplier represents and warrants to the Council that the Supplier has satisfied himself that all necessary tests, inspections and examinations have been made or will be made prior to the performance of the Services to ensure that the Services are so as to be performed safely and without risk to the health or safety of persons using the same, and that the Supplier has made available to the Council adequate information about the use for which the Services have been designed (or will be performed) and have been tested and about any conditions necessary to ensure that when put to use the Services will be safe and without risk to health.
- 4.5 Without prejudice to the generality of clause 4.4 hereof, the Supplier shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of clause 4.5.
- 4.6 The Supplier shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Council's prior consent.
- 4.7 Access to the Premises shall not be exclusive to the Supplier but only such as shall enable the Supplier to carry out the Services concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Council may reasonably require.
- 4.8 The Council shall have the power at any time during the progress of the Services to order in writing:
- (a) the removal from the Premises of any materials which in the opinion of the Council are either hazardous, noxious or not in accordance with the Contract, and/or
  - (b) the substitution of proper and suitable materials, and/or
  - (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefor of any work which, in respect of material or workmanship is not in the opinion of the Council in accordance with the Contract.
- 4.9 The Supplier shall forthwith comply with any order made under Condition 4.8.



- 4.10 On completion of the Services the Supplier shall remove the Supplier's plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

#### **4A. Health & Safety**

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

#### **5. Suppliers Personnel**

- 5.1 Where it is stated within the Specification and/or Invitation to Tender, or the Supplier has stated within their Tender that a particular individual or individuals will perform the Services, the Supplier shall be expressly prohibited from delivering the Services utilising any other individual, save with the consent of the Council (such consent which the Council may give at its absolute discretion).
- 5.2 Failure to make available the personnel in accordance with clause 5.1 shall constitute a material breach of the Contract and shall entitle the Council to terminate the Contract on giving immediate written notice to the Supplier. Notwithstanding this clause 5.2, the Supplier may propose another suitably qualified person or persons to deliver the Service, although acceptance of such proposed alternate is entirely at the discretion of the Council.
- 5.3 If and when instructed by the Council, the Supplier shall give to the Council a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require.

- 5.4 The Supplier shall take the steps reasonably required by the Council to prevent unauthorised persons being admitted to the Premises. If the Council gives the Supplier notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Supplier shall take all reasonable steps to comply with such notice and if required by the Council the Supplier shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.
- 5.5 The decision of the Council as to whether any person is to be admitted to or is to be removed from the any premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Supplier has furnished the information or taken the steps required of him by this clause shall be final and conclusive.
- 5.6 The Supplier shall bear the cost of any notice, instruction or decision of the Council under this Clause, with such cost being a debt payable on immediate written demand by the Council to the Supplier.

#### **5A. Supplier's Status**

- 5A.1 In carrying out the Services the Supplier shall be acting as a principal on their own account and at no times as the agent of the Council.

Accordingly:

- (a) Except where as expressly authorised in writing by the Council's proper officer set out in clause 7, the Supplier shall not (and shall procure that any person to whom they are legally responsible for) say or do anything that might lead any third party to believe that the Supplier is acting as the agent of the Council, and
- (b) Nothing in this Contract shall impose any liability on the Council in respect of any liability incurred by the Supplier to any other person but this shall not be taken to exclude or limit any liability of the Council to the Supplier that may arise by virtue of either a breach of this Contract or any negligence on the part of the Council or any person that the Council is legally responsible for.

#### **5B. Free Issue Materials**

- 5B.1 Where the Council for the purpose of the Contract issues materials free of charge to the Supplier such materials shall be and remain the property of the Council. The Supplier shall maintain all such materials in good order and condition and shall use such materials solely in

connection with the Contract. The Supplier shall notify the Council of any surplus materials remaining after completion of the Services and shall dispose of them as the Council may direct. Waste of such materials arising from bad workmanship or negligence of the Supplier or any person whom the Supplier is legally responsible for shall be made good at the Supplier's expense. Without prejudice to any other of the rights of the Council, the Supplier shall deliver up such materials whether processed or not to the Council on demand.

## **6. Patents, Information and Copyright**

- 6.1 It shall be a condition of the Contract that, except to the extent that the Services incorporate designs furnished by the Council, that nothing done by the Supplier in the performance of the Services shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Supplier shall indemnify the Council against all actions, claims, demands, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this Condition.
- 6.2 All rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs whether in writing or on magnetic or other media:
- (a) furnished to or made available to the Supplier by the Council shall remain vested in the Council absolutely.
  - (b) prepared by or for the Supplier for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Council absolutely, and the Supplier shall not and shall procure that the Supplier's servants and agents shall not (except to the extent necessary for the implementation of this Contract) without the prior written consent of the Council use or disclose any such reports, documents, specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to this Contract) which the Supplier may obtain pursuant to or by reason of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Supplier shall not refer to the Council or the contract in any advertisement without the Council's prior written consent.
- 6.3 The provisions of this Clause 6 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **7. Variations - Contract Terms**

- 7.1 No variations to these contract terms shall be accepted by the Council except where the variation procedure detailed in this clause 7 has been complied with.
- 7.2 Any request for variations or alterations to these terms and conditions must be sent in writing to (i) the Head of Legal Services, Perth & Kinross Council, 2 High Street, Perth, PH1 5PH; (ii) by enclosing a Schedule of Derogations with the Tender; or (iii) by email to: procurement@pkc.gov.uk. Providing that the supplier provides a copy of the proposed variation(s) or replacement terms, the Head of Legal Services will consider any such request and will advise the Supplier accordingly.
- 7.3 No variation, replacement, alternative or substitute terms and conditions shall apply to the contract unless such terms are subscribed by the Head of Legal Services and in accordance with section 3 of the Requirements of Writing (Scotland) Act 1995 and any attempt by the Supplier to impose any alternative conditions (including the imposition of any clause superseding or constituting an entire agreement clause) shall be null and void and shall not be binding on the Council.

## **8. Variations – Specification**

- 8.1 The Council may order any variation to any part of the Services that for any other reason shall in the Council's opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Services and changes in quality, form, character, kind, timing, method or sequence of the Services.
- 8.2 Save as otherwise provided herein, no variation of the Services as provided for in Condition 8.1 hereof shall be valid unless given or confirmed in the form of an order given by the Council. All such orders shall be given in writing provided that if for any reason the Council shall find it necessary to give any such order orally in the first instance the Supplier shall comply with such oral order which must be confirmed in writing by the Council within 2 working days of the giving of such oral order by the Council, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.
- 8.3 Where the Services are priced within the Tender, the additional Services shall be supplied at no greater cost than is specified for such item(s) in the Suppliers Tender. Where the Services to be supplied are reduced in number or duration then the applicable deduction shall be made from the final price payable (either by agreement or failing which on a pro-rata basis).

- 8.4 Where any such variation of the Services made in accordance with Condition 8.1 and 8.2 has affected or may affect the costs incurred by the Supplier in providing the Services, the Supplier will notify the Council in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Council, who shall take all of the facts into account (including such information as may be provided by the Supplier in respect of the effect which such variation has had or may have on the costs incurred by the Supplier in providing the service) and may authorise such alteration to the sums to be paid to the Supplier in accordance with the provisions of the Contract as are, in the Council's opinion, appropriate and reasonable in the circumstances.
- 8.5 Where the additional Services requested by the Council are not described in the Specification, but are ancillary to the requirements of the Specification, the Council may issue a request for quotation for such additional Services to the Supplier.
- 8.6 The Supplier shall within 14 days (or such other period as may be agreed) provide the quotation for the additional Services. The Council may either accept the quotation or determine not to proceed with the order for the additional Services.
- 8.7 Where the Council accepts the quotation, the additional Services shall be provided to the Council by the Supplier in accordance with the Contract. If the Council rejects the quotation, no compensation shall be payable to the Supplier.
- 8.8 The Council shall not be required to make payment for any additional Services supplied in accordance with clauses 8 to clauses 8.7, except where (i) this clause has been complied with by the Supplier or (ii) the Council and the Supplier have complied with the terms of clause 8.9 and 8.10 below.
- 8.9 If it is agreed between the parties, or exceptional and unforeseen circumstances require additional Services to be purchased on a Time Charge basis, then payment is made based on the actual staff time spent rounded to the nearest 0.25 hours. The Time Charge does not include normal travel time to and from the place where the Supplier's staff are based for the contract. If travel time to and from the place where the Supplier's staff are to be based for the contract is exceptional, the Supplier and the Council agree in advance whether any exceptional travel time is included in the Time Charge. It is the Supplier's responsibility to identify and raise any exceptional travel time and expenses in advance with the Council, failing which the Council is not liable to reimburse any additional time.
- 8.10 The Supplier must provide a detailed breakdown for any staff doing work on a Time Charge basis on a weekly basis. Each timesheet must include as a minimum:

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

## **9. Termination of the Contract**

- 9.1 The Supplier shall notify the Council in writing immediately upon the occurrence of any of the following events:
- (a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of the Supplier's estate or a criminal bankruptcy order is made against the Supplier, or the Supplier is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage the Supplier's affairs; or
  - (b) where the Supplier is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or
  - (c) where the Supplier is a company, if the company passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.
- 9.2 On the occurrence of any of the events described in Condition 9.1 or, if the Supplier shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the Council in writing to do so or, where the Supplier is an individual if the Supplier shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003, the Council shall be entitled to terminate this Contract by notice to the Supplier with immediate effect. Thereupon, without prejudice to any other of the Council's rights, the Council may complete the Services or have them completed by a third party, using for that purpose (making a fair

and proper allowance therefor in any payment subsequently made to the Supplier) all materials, plant and equipment on the Premises belonging to the Supplier, and the Council shall not be liable to make any further payment to the Supplier until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Supplier the costs thereof incurred by the Council (including the Council's own costs). If the total cost to the Council exceeds the amount (if any) due to the Supplier, the difference shall be recoverable by the Council from the Supplier.

9.3 The Council 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 Supplier 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 Supplier 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.

9.4 The Council may also terminate the Contract in the event of a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social and employment law.

9.5 In addition to the Council's rights of termination under Clauses 9.2, 9.3 and 9.4 the Council may terminate the Contract, in whole or in part, or reduce the scope or amount of Services to be supplied under the Contract, (and without penalty) at any time by giving you at least 30 days' notice in writing.

9.6 In addition to the Council's rights to termination under Clauses 9.1, 9.2, 9.3, 9.4 and 9.5 the Council shall be entitled by notice to the Supplier to terminate the Contract, any other contract with the Council if, in

relation to this or any other such contract, the Supplier or any person employed by him, or acting on his behalf shall have:

- (i) Committed an offence under the Bribery Act 2010; or
- (ii) Shall have given any fee or reward the receipt of which is an offence under section 66 of the Local Government (Scotland) Act 1973 or any re-enactment thereof; or
- (iii) Committed any breach of the Employment Relations 1999 Act (Blacklists Regulations) 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992; or
- (iv) Committed any breach of the Data Protection Act 1998 or Data Protection Laws by unlawful processing of personal data in connection with any blacklisting activities described at (iii) above.

9.8 In the event that the Council receives notification by an economic operator (within the meaning of the Procurement Regulations) that they intend to challenge the award of this Contract by the Council to the Supplier, the Council may on giving immediate written notice to the Supplier, either (i) suspend the operation of the Contract; or (ii) terminate the Contract in its entirety.

9.9 In the event of termination or suspension pursuant to this section 9.8, no compensation, damages or other monetary payment shall be due by the Council to the Supplier.

9.10 The right of the Council to terminate or suspend the Contract in accordance with sections 9.8 and 9.9 shall expire on the date occurring 4 months from the publication by the Council of a contract award notice in the Public Contracts Scotland Portal.

9.11 On or before the Termination Date, the Supplier shall (if requested) return all documents and other information supplied by the Council in relation to this Contract (unless the Council requires the Supplier to destroy or securely dispose of such documents).

9.12 Termination under any of the above clauses shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Council and shall not affect the continued operation of Clauses 14B (Audit), 6 (Patents, information and copyright), and 18 (Transfer of Undertaking).

## **9A. Insurance and Indemnity**

9A.1 Without prejudice to any rights or remedies of the Council under the Contract, the Supplier shall indemnify the Council, its officers, employees, agents and other contractors against all actions, suits, claims, demands, losses, charges, costs and expenses which the



Council may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the Supplier.

9A.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Supplier (in respect of which the indemnity in clause 9A.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Council, its officers, employees, agents and other contractors.) the indemnity contained in clause 9A.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Council or its officers, employees, agents or other contractors.

9A.3 The Supplier shall have in force and shall require any sub-contractor to have in force:

- (a) Employer's liability insurance in accordance with any legal requirements for the time being in force;
- (b) Public liability insurance for such sum and range of cover as the Supplier deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under this Contract in the sum of not less than £5 million for any one incident and unlimited in total, unless otherwise agreed by the Council in writing; and
- (c) where stated in the Invitation to Tender, the Specification or by the Council, the requisite level of professional indemnity insurance and/or medical malpractice insurance as may be required by the Council.

9A.4 The policy or policies of insurance referred to in clause 9A.3 shall be shown to the Council whenever it requests, together with satisfactory evidence of payment of premiums.

## **10. Governing Law and Jurisdiction**

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

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

## **11. Notices**

11.1 Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery and if so sent to the address of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours, or in the case of the Council, in accordance with the relevant provisions of the Local Government (Scotland) Act 1973. All notices to be served on the Council must be served on the Head of Legal Services, Perth & Kinross Council, 2 High Street, Perth, PH1 5PH

## **12. Severability**

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

## **13. Third Party Rights**

13.1 Save to the extent expressly provided in this Contract and, to avoid doubt, without prejudice to the rights of any permitted successor to the rights of the Supplier or of any permitted assignee, it is expressly declared that no rights shall be conferred under and arising out of this Contract upon any person other than the Council and the Supplier and without prejudice to the generality of the foregoing, there shall not be created by this Contract a *jus quaesitum tertio* in favour of any person whatsoever or an undertaking in favour of any party all in terms of the Contract (Third Party Rights) Scotland Act 2017.

## **14. Limitation of Liability**

14.1 Nothing in this Contract shall exclude or limit liability of the Council or the Supplier in respect of any death or personal injury to any party caused by the negligence of that party.

14.2 in respect of any sanctions or fines imposed due to the breach or breaches of the Data Protection Act 1998 or Data Protection Laws by the Information Commissioners Office (including those set out in clause 9(3)(iv)), £500,000 on an each and every occurrence basis;

14.3 in respect of any losses, damage or destruction caused by the default of the Supplier under this Agreement (including for the avoidance of any doubt, professional negligence or medical malpractice) for which there is a requirement to have such a policy of insurance in place, the sum specified in clause 9A3(a), (b) or (c), the Specification, Invitation

to Tender or such other document which states the requisite insurance level; or

- 14.4 in respect of any losses, damage or destruction caused by the default of the Council under this Agreement for which the Council is required by law to have in place a policy of insurance, the sum of £1million pounds sterling (or such higher sum that (i) the Council may notify in writing to the Supplier, or (ii) is required to hold by law); or
- 14.5 Except in respect of any claims under the indemnities set out in clause 18 of the Contract, in respect of any other losses howsoever arising as a result of that party's breach of contract, the total amount payable under the Contract. Where the Contract is a call off arrangement, then such sum shall be limited to the value of any orders placed with the Supplier under the Contract.
- 14.6 Notwithstanding the above provisions, nothing in this clause shall allow for the Supplier to claim for any special or indirect, consequential or indirect losses, loss of profit, turnover, additional business or damage to goodwill.
- 14.7 Nothing in this clause 14 shall affect the parties general duty to mitigate any losses incurred.

#### **14A. Protection of Vulnerable Groups**

- 14A.1 The Supplier shall ensure that throughout the duration of the contract that any person employed by him or acting on his behalf is suitable to provide the Services given the nature of any third parties with whom there may be some contact in the normal performance of the contract. The Council may instruct the Supplier to remove from premises any individual employed by the Supplier or acting on his behalf where the Council deems the individual not to be suitable and on receipt of such instruction the Supplier will remove such individual from premises forthwith.
- 14A.2 Where the Services are Regulated Work the Supplier and any person employed by him or acting on his behalf ensures compliance with all of the relevant requirements of the PVG Act, including the establishment of and adherence to effective procedures in respect of the Supplier and any person employed by him or acting on his behalf.
- 14A.3 Where the Services require the Supplier or any person employed by him or acting on his behalf to have been Disclosure checked then the Supplier shall, obtain the appropriate level of Disclosure directly from Disclosure Scotland.

## **14B. Audit**

- 14B.1 The Supplier shall keep and maintain until 5 years after the Contract has been completed records to the satisfaction of the Council of all expenditures which are reimbursable by the Council and of the hours worked and costs incurred in connection with any employees of the Supplier paid for by the Council on a time charge basis. The Supplier shall on request afford the Council or the Council's representatives such access to those records as may be required by the Council in connection with the Contract.
- 14B.2 The provisions of this Condition 14B shall apply during the continuance of this Contract and after its termination howsoever arising.

## **15. Freedom of Information & Data Protection**

- 15.1 The Supplier acknowledges that Personal Data described in the scope of the Schedule (Data Protection) will be processed in connection with the Services under this Contract. For the purposes of any such Processing, Parties agree that the Supplier acts as the Data Processor and the Council acts as the Data Controller.
- 15.2 Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this Clause 15 are without prejudice to any obligations and duties imposed directly on the Supplier under Data Protection Laws and the Supplier hereby agrees to comply with those obligations and duties.
- 15.3 The Supplier will, in conjunction with the Council and in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with Data Protection Laws.
- 15.4 The Supplier will provide the Council with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 15.5 The Supplier must:
- 15.5.1 agree and comply with the terms of the data processing provisions set out in the Schedule (Data Protection);
  - 15.5.2 process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Council (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to

which the Supplier is subject; in which case the Supplier must inform the Council of that legal requirement before processing unless prohibited by that law the Personal Data only to the extent, and in such manner as is necessary for the performance of the Supplier's obligations under this Contract or as is required by the Law;

15.5.3 subject to Clause 15.5.2 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Council's prior written consent;

15.5.4 take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:

15.5.4.1 are aware of and comply with the Supplier's duties under this Clause;

15.5.4.2 are subject to appropriate confidentiality undertakings with the Supplier or the relevant Sub-contractor;

15.5.4.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Contract; and

15.5.4.4 have undergone adequate training in the use, care, protection and handling of Personal Data.

15.5.5 implement appropriate technical and organisational measures including those set out in the Schedule (Data Protection) and in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.

15.6 The Supplier shall not engage a sub-contractor or sub-Supplier to carry out Processing in connection with the Services without prior specific or general written authorisation from the Council. In the case of general written authorisation, the Supplier must inform the Council of any intended changes concerning the addition or replacement of any other sub-contractor and give the Council an opportunity to object to such changes.

- 15.7 If the Supplier engages a sub-contractor or sub-Supplier for carrying out processing activities on behalf of the Council, the Supplier must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Supplier shall remain fully liable to the Council for the performance of the sub-Supplier or sub-contractor's performance of the obligations.
- 15.8 The Supplier must provide to the Council reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23, including any subject access request and/or responding to any enquiry made, or investigation or assessment of processing initiated by the Information Commissioner in respect of the Data as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Data Controller from time to time.
- 15.9 Taking into account the nature of the Processing and the information available, the Supplier must assist the Council in complying with the Council's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:
- (a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.
  - (b) notifying a Personal Data breach to the Council without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
  - (c) assisting the Council with communication of a personal data breach to a Data Subject;
  - (d) supporting the Council with preparation of a data protection impact assessment;
  - (e) supporting the Council with regard to prior consultation of the Supervisory Authority.
- 15.10 At the end of the provision of Services relating to processing the Supplier the Supplier must, on written instruction of the Council, delete or return to the Council all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.

15.11 The Supplier must:

- (a) provide such information as is necessary to enable the Council to satisfy itself of the Supplier's compliance with this Clause 15;
- (b) allow the Council, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Clause 15 and contribute as is reasonable to those audits and inspections;
- (c) inform the Council if in its opinion an instruction from the Council infringes any obligation under the Data Protection Laws.

15.12 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Clause 15.14 with minimum disruption to the Supplier's day to day business.

15.13 The Supplier must maintain written records including in electronic form, of all Processing activities carried out in performance of the Services or otherwise on behalf of the Council containing the information set out in Article 30(2) of the GDPR.

15.14 If requested, the Supplier must make such records referred to Clause 15.12 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.

15.15 The Supplier acknowledges the Council's obligations under the Freedom of Information (Scotland) Act 2002 ("the 2002 Act") and acknowledges in particular that the Council may be required to provide information relating to the Contract or the Supplier to any person on request in order to comply with the 2002 Act. The Council will presume the information submitted by the Supplier to the Council is not commercially sensitive unless specifically drawn to the Council's attention. The Council must act in accordance with the 2002 Act but in deciding whether to release any information in response to a request for information shall where practicable take into account any opinion of the Supplier as regards commercial confidentiality and, in particular, any reasons given to support such exemption.

15.16 Where the Council seeks to consult the Supplier in connection with a request for information made under the 2002 Act the Supplier will facilitate the Council's compliance with the 2002 Act by consulting timeously with the Council.

15.17 The Supplier shall keep secret and not disclose (and shall procure that his employees, agents, sub-contractors or any party that the Supplier is legally responsible for, keep secret and not disclose) any information

of a confidential nature obtained by the Supplier by reason of the Contract, except information which is in the public domain otherwise than by reason of a breach of this Clause 15.

## **16. Unlawful Discrimination**

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



by the Council during or in connection with any such investigation or proceedings and further indemnify the Council for any compensation, loss or damages, costs, expenses (including legal and administrative expenses) or other award the Council may be ordered or required to pay to a third party.

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

## **17. Entire Agreement**

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

## **18. Transfer of Undertaking**

- 18.1 The Supplier recognises that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall (a) transfer to the Supplier on the commencement of the Contract; (b) transfer to another supplier on the expiry of the Contract.
- 18.2 In the event that the Services are put out to tender by the Council in furtherance of their obligations under the Procurement Regulations, the Supplier shall co-operate with the Council and any Replacement Contractor in ensuring the smooth handover of the Services.

- 18.3 The Supplier shall at any time during the Transfer Assistance Period:
- 18.3.1 on receiving a request from any Council promptly provide, subject to legal obligations regarding data protection and confidentiality, in respect of any persons wholly or mainly engaged or employed by the Supplier in the provision of the Services (the Assigned Employees) full and accurate details regarding the number, job title, grade, salary and benefits relating or payable to the Assigned Employees together with such other information relating to the Assigned Employees which is in the possession of the Supplier or which can reasonably be obtained by the Supplier from any third party as may reasonably be required by such Council or any prospective Replacement Contractor (the Re-tendering Information); and
  - 18.3.2 notify the Council in writing of any material changes to the Re-tendering Information promptly as and when such changes arise.
- 18.4 The Supplier shall permit the Council to use the information for the purposes of TUPE and of re-tendering, which shall include such disclosure to potential suppliers as the Council considers appropriate in connection with any re-tendering. The Supplier will co-operate with the re-tendering of the contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.
- 18.5 The Supplier agrees to indemnify the Council fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision or disclosure of information permitted under this Clause.
- 18.6 In the event that the information provided by the Supplier in accordance with this Clause becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Council of the inaccuracies and provide the amended information. The Supplier shall be liable for any increase in costs the Council may incur as a result of the inaccurate or late production of data.
- 18.7 The Supplier undertakes that in the Transfer Assistance Period it shall not without the prior written consent of the Council:
- 18.7.1 materially vary the terms and conditions of any of the Assigned Employees (including without limitation remuneration, benefits

and other perquisites and collective agreements which relate to the employment of such employees); or

18.7.2 increase the number of Assigned Employees; or

18.7.3 replace any of the Assigned Employees, save where the Supplier replaces any such individuals with individuals of substantially equivalent employees in relation to grade and remuneration.

18.8 The Supplier shall during the Service Period maintain personnel records in the format normally adopted regarding the service of each of the Assigned Employees including all personnel records required to be maintained by law and deliver the records of relating to any Assigned Employee to the Council or the Replacement Contractor on the Transfer Date.

18.9 The Parties acknowledge that by virtue of the cessation or partial cessation of the provision of the Services by the Supplier the contracts of employment of each Transferring Employee may have effect after such cessation as if originally entered into between a Replacement Contractor or the Council and each Transferring Employee pursuant to the TUPE Regulations but the Parties agree that the provisions of Clauses 18.6 to 18.9 inclusive shall apply irrespective of whether or not the TUPE Regulations do apply.

18.10 All remuneration of any kind due to the Transferring Employees during the period of this Agreement applicable to them shall be paid or settled in full by the Supplier in each case no later than the date such remuneration is due to be paid.

18.11 At the earlier of (i) a contract notice being published by the Council in respect of the provision of the Services (or part thereof) or (ii) 21 days prior to any prospective Transfer Date the Supplier will supply to the Council or the Replacement Contractor (as the case may be) information regarding the identity, age, sex, length of service, job title, holiday entitlement, workplace, and terms and conditions of employment affecting each of the Assigned Employees at that time and the Supplier will update the Council or the Replacement Contractor (as the case may be) in respect of any changes to the information supplied by it pursuant to this condition in a timely fashion throughout the period between the information being provided and the applicable Transfer Date.

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

(a) any claim by any of the Transferring Employees (or any person who would have been a Transferring Employee but for their

dismissal prior to the Transfer Date) arising out of their employment with the Supplier or the termination thereof, providing that such liabilities arise from any act or omission prior to the Transfer Date and this shall not include any such liabilities which arise from any act or omission of such Council or any Replacement Contractor (as the case may be); or

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

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

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

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

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

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

**"Replacement Contractor"** means any third party service provider appointed by the Council from time to time, to provide any services

which are substantially similar to any of the Services, and which the Council receives in substitution for any of the Services following the termination or partial termination of this Agreement.

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

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

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

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

## **18A. Waiver**

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

18A.2 Notwithstanding any breach of this Contract by either party, and without prejudice to any other rights which the party may have in relation to it, the other party may elect to continue to treat this Contract as being in full force and effect and to enforce its rights under this Contract. The failure of any party to exercise any right under this Contract, including any right to terminate this Contract and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.

## **19. Set Off and Retention of Sums Due**

19.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under the Contract or under any other agreement or contract with the Council or with any department, agency or authority of the Council.

19.2 Without prejudice to the terms of clause 19.1 above, where the Supplier has offered within the Tender to provide Community Benefit

Provision to the Council (pursuant to the Council's statutory powers under the Local Government in Scotland Act 2003), the Supplier shall be obliged to deliver the Community Benefit Provision in accordance with the Tender and any further requirements of the Council and at no cost to the Council as more particularly specified in the Specification and Invitation to Tender.

- 19.3 In the event that the Supplier fails to provide the Community Benefit Provision in accordance with clause 19, the Council reserves the right, on giving the Supplier not less than 7 days written notice, to either (i) provide the Community Benefit Provision directly; or (ii) employ others to carry out the Community Benefit Provision.
- 19.4 The Supplier shall be liable for all additional costs incurred by the Council in connection with such employment and such costs may be withheld or deducted by the Council from any monies due or to become due to the Supplier under this Contract or shall be recoverable from the Supplier as a debt.

## **20. Confirmation of Registration with HMRC**

- 20.1 Where the Supplier is an individual or a nominated partner within a self-employed partnership, then prior to the commencement date of the contract, the Supplier shall (a) insofar as not already done so, notify Her Majesty's Revenue & Customs of their status as self-employed and (b) provide such confirmation as is acceptable to the Council that they have complied with the terms of any legal requirement to register as such with Her Majesty's Revenue & Customs.
- 20.2 Where the Supplier fails to comply with the terms of clause 20.1 above, the Employer is entitled to withhold from the price as set out in the Suppliers Tender (and take any other steps as the Council deems necessary), the sum equivalent to the value of Income Tax and Employee National Insurance as if the Supplier was an employee through the "Pay As You Earn" taxation system of the Council.
- 20.3 Should the Supplier fail to comply with the requirements set out in clause 20.1 (and any applicable legal obligation pertaining thereto), the Council reserves the right to make payment of the sums retained under clause 20.2 to Her Majesty's Revenue & Customs without compensation or additional sums being due to the Supplier. Any dispute or difference relating to the deduction is a matter for resolution between Her Majesty's Revenue & Customs and the Supplier.
- 20.4 Nothing in this clause 20 (including without prejudice to the generality, the deduction of any sum in accordance with clause 20.2 above) shall be held to give rise to or create a contract of employment between the Supplier and the Council.

- 20.5 Subject to the terms of clause 20.3, in the event that such confirmation as required by clause 20.1 is received, the Council shall make payment of the sums retained in accordance with clause 20.2 within 28 days following receipt by the Council of such confirmation. For the avoidance of any doubt, the Supplier shall not be entitled to any additional payment or interest on this sum whatsoever.
- 20.6 Without prejudice to any other terms of the Contract, the Supplier shall indemnify the Council in respect of any liability arising out of any breach or non-observance of this clause 20.

## **21. Assignment and Sub-Contracting**

- 21.1 The Supplier may not subcontract its interests and/or obligations under the Contract to any other person without the prior consent in writing of the Council which consent shall not be unreasonably withheld. Such consent shall not be required where the Supplier has stated their intention to subcontract part or the whole of the Contract in the Tender. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract or these Conditions.
- 21.2 Where there is agreement to sub-contract any part of the performance of the Suppliers obligations, the Supplier shall be responsible for the acts and/or omissions of their sub-contractors as though they were their own and shall ensure that the terms of the Contract are reflected mutatis mutandis to any sub-contractor.
- 21.3 Subject to the provisions of clause 21.4, neither party may assign its interests and/or obligations under the Contract to any other person without the prior consent in writing of the other party, which consent shall not be unreasonably withheld.
- 21.4 The Council shall be free to assign its interests and/or obligations under the Contract without the consent of the Supplier to any other local authority constituted in terms of the Local Government etc (Scotland) Act 1994, providing that the Council gives the Supplier not less than 7 days written notice of its intention to do so.
- 21.5 Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to the Council immediately it is issued.
- 21.6 Where the Supplier enters into a sub-contract must ensure that a provision is included which:
- 21.6.1 requires payment to be made of all sums due by the Supplier 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

Council has made payment to the Supplier in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Supplier 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 Supplier, payment must be made to the sub-contractor without deduction;

21.6.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Council 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 Council; and

21.6.3 in the same terms as that set out in this clause 21.6 (including for the avoidance of doubt this clause 21.6.3) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and sub-contractor as the case may be.

21.7 The Supplier shall also include in every sub-contract:

21.7.1 a right for the Supplier to terminate that sub-contract if the relevant sub-contractor 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 clause 9.3 occur; and

21.7.2 a requirement that the sub-contractor includes a provision having the same effect as 21.7.1 above in any sub-contract which it awards.

In this condition 21.7, 'sub-contract' means a contract between two or more suppliers, at any stage of remoteness from the Council 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.

## **22. Corrupt Gifts and Payments**

22.1 The Supplier shall not offer or give, or agree to give, to any employee or representative of the Council any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Council or for showing or refraining from showing favour or disfavour to any



person in relation to this or any such contract. The attention of the Supplier is drawn to the criminal offences created by the Bribery Act 2010.

### **23. Dispute Resolution**

- 23.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.
- 23.2 Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination which cannot be resolved in good faith, shall be determined by the appointment of a single arbitrator to be agreed between the parties, and failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.
- 23.3 Any arbitration under 24.2 is subject to the Arbitration (Scotland) Act 2010.

### **24. Tax Arrangements**

- 24.1 Where applicable the Supplier shall comply with the following:
- 24.1.1 Where the Supplier is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 24.1.2 Where the Supplier is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 24.2 The Council may, at any time during the term of this contract, request the Supplier to provide information which demonstrates how the Supplier complies with sub-clauses 24.1.1 and 24.1.2, if applicable, above or why those clauses do not apply to it.
- 24.3 A request under clause 24.2 above may specify the information which the Supplier must provide and the period within which that information must be provided.

- 24.4 The Council may supply any information which it receives under clause 24 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 24.5 The Supplier shall take all reasonable steps to ensure the observance of the provisions of this clause 24 by all of their servants, employees, agents, consultants and sub-contractors.
- 24.6 Where the Supplier enters into any contract with any of its servants, employees, agents, consultants and/or sub-contractors, the Supplier must ensure that a provision is included which is in the same terms as this clause 24 subject only to modification to refer to the correct designation of the equivalent party as the Supplier.

## **25. Headings**

- 25.1 The headings to Conditions shall not affect their interpretation.

### **Schedule Data (Protection)**

Data Processing provision as required by Article 28(3) GDPR.

This Schedule includes certain details of the Processing of Personal Data in connection with the Services:

#### *Subject matter and duration of the Processing of Personal Data*

The subject matter and duration of the Processing of Personal Data are [insert description here].

#### *The nature and purpose of the Processing of Personal Data*

[Include description here]

#### *The type of Personal Data to be Processed*

[Include list of data types here]

#### *The categories of Data Subject to whom Personal Data relates*

[Include categories of data subjects here]

#### *The obligations and rights of the Purchaser*

The obligations and rights of the Purchaser as the Data Controller are set out in Clause 15 of the Contract.