



Stirling Council

Terms and Conditions (Goods and Services, including Consultancy)

STIRLING COUNCIL'S CONDITIONS FOR GOODS AND SERVICES

These conditions may only be varied with the written agreement of the Council. No terms or conditions put forward at any time by the Provider shall form any part of the Contract unless specifically agreed in writing by the Council.

1. DEFINITIONS AND INTERPRETATION

In these conditions:

'Consistent Failure' means the Council serving 3 Remediation Notices in a rolling 3 month period or 2 Default Notices in a rolling 6 month period;

'Contract' means the contract between the Council and the Provider consisting of the ITT, the Contract Acceptance Letter, these terms and conditions, the Specification, the Pricing Schedule and the Provider's tender (and any clarifications to the Provider's tender) any Purchase Order and any document referred to in the Contract Acceptance Letter or these terms and conditions or Purchase Orders and any other documents (or parts thereof) specified in the ITT or any other tender documentation from the Council;

'Contract Acceptance Letter': the letter issued by the Council to the Provider in respect of the goods or services to be provided by the Provider to the Council;

'Council' means Stirling Council, a local authority constituted under the Local Government etc (Scotland) Act 1994 and having its principal office at Old Viewforth, 14-20 Pitt Terrace, Stirling, FK8 2ET;

'Goods' means any such goods as are to be supplied to the Council by the Provider (or by any of the Provider's sub-contractors) pursuant to or in connection with this Contract;

'Easybuy' means the electronic purchase to pay ordering system used

by the Council, also known as PECOS.

'Intellectual Property' means any and all intellectual property rights of any nature anywhere in the world, whether registered or otherwise, including (without limitation) patents, trade marks, registered designs, copyright, databases, websites and know-how;

'ITT' means the invitation to tender, request for quote, instructions to tenderers and other instructions and documentation issued by the Council in respect of the Services and/or Goods and referred to in the Contract Acceptance Letter or issued under the contract reference in the Contract Acceptance Letter or issued by the Council by any other means and any clarifications and qualifications issued by the Council;

'Premises' means the location where the Services are to be performed, as specified in the Specification;

'Price' means the price for Goods and charges for Services as specified in the relevant Purchase Order or Contract Acceptance Letter or the Pricing Schedule provided as part of the Provider's tender;

'Pricing Schedule' means the pricing schedule submitted as part of the Provider's tender (as amended by any clarifications to the Provider's tender referred to in the Contract Acceptance Letter);

'Provider' means the person, firm or company to whom the Contract is issued, as specified in the Contract Acceptance Letter or Purchase Order;

'Provider's tender' means the tender or other response submitted by the Provider in response to the ITT;

'Purchase Order' means the order for goods or services to be provided under this Contract issued to the Provider by the Council

'Purchase Order Number' means the unique number allocated to the Purchase Order;

'Purchasing Card' a corporate charge card issued by Stirling Council to approved, named employees.

'Remediation Notice' means a notice served by the Council in accordance with Condition 21.3;

'Services' means the services to be provided pursuant to this Contract as specified in the Specification and shall, where the context so admits, include any materials, articles and Goods to be supplied;

'Specification' means the document setting out the Council's requirements for Goods and the delivery of the Service;

'Valid Invoice' means a properly constituted invoice on the Provider's headed paper or as otherwise required by the Council (which may include e-invoicing) addressed to The Stirling Council, containing the Purchase Order Number and where the Provider is registered for VAT and the supply is not exempt from VAT a VAT registration number and full breakdown of costs Net Vat and Gross; and

'Working Day' means any day other than a Saturday or Sunday on which

the Scottish clearing banks are open for business.

Where there is any conflict or inconsistency between the provisions of the Contract, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the Contract Acceptance Letter (including any special conditions); then
- (b) these terms and conditions; then
- (c) the Specification; then
- (d) the Pricing Schedule; then
- (e) Purchase Orders; then
- (f) the ITT (excluding the documents referred to at (a) to (e) above; then
- (g) any clarification to the Provider's tender; then
- (h) the Provider's tender.

2. CHANGE TO CONTRACT REQUIREMENTS

2.1 The Council may order any variation to any part of the Services or quantity or specification of the Goods that for any 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 Goods or Services and changes in quality, form, character, kind, timing, method or sequence of the delivery of Goods or provision of Services.

2.2 Except as permitted by this Contract, no variation of the specification of the Goods or of the Services as provided for in Condition 2.1 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 Provider 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.

- 2.3 Where any such variation of the Goods or Services made in accordance with Condition 2.1 and 2.2 has affected or may affect the costs incurred by the Provider in delivering the Goods or providing the Services, the Provider 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 Provider in respect of the effect which such variation has had or may have on the costs incurred by the Provider in delivering the Goods or providing the Services) and may authorise such alteration to the sums to be paid to the Provider in accordance with the provisions of the Contract as are, in the Council's opinion, appropriate and reasonable in the circumstances.

3. INSPECTION OF PREMISES AND NATURE OF SERVICES

- 3.1 The Provider 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 Goods to be delivered and is deemed to be satisfied in relation to all matters connected with the Services, Goods and Premises.
- 3.2 The Council shall, at the request of the Provider, grant such access as may be reasonable for this purpose.
- 3.3 Unless otherwise specified, the Provider shall provide all plant, tools, material, labour, haulage and any other things necessary to complete the Contract.

4. PROVIDER'S STATUS

- 4.1 In carrying out the Services the Provider shall be acting as principal and not as the agent of the Council. Accordingly:
- (a) the Provider shall not say or do anything that might lead any other person to believe that the Provider 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 Provider to any other person but this shall not be taken to exclude or limit any liability of the Council to the Provider that may arise by virtue of either a breach of this Contract or any negligence on the part

of the Council, or the Council's staff or agents.

5. PROVIDER'S PERSONNEL

- 5.1 The Provider shall make available for the purposes of the Services any individuals named on the Provider's tender as key personnel. The Provider shall provide the Council with a list of the names and work addresses of all others regarded by the Provider as key personnel and, if and when instructed by the Council, all other persons who may at any time be concerned with the Services or any part of it, specifying in each case 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. The Council may at any time by notice to the Provider designate any person concerned with the Services or any part of it as a key person. The Provider shall not without the prior written approval of the Council make any changes in the key personnel referred to in this Condition.
- 5.2 The Provider shall take the steps reasonably required by the Council to prevent unauthorised persons being admitted to the Premises. If the Council gives the Provider 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 Services, the Provider shall take all reasonable steps to comply with such notice.

- 5.3 The decision of the Council shall be final and conclusive as to whether any person is 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 Services or as to the designation or approval of key personnel and as to whether the Provider has furnished the information or taken the steps required of the Provider by this Condition.
- 5.4 The Provider shall bear the cost of any notice, instruction or decision of the Council under this Condition.

6. MANNER OF CARRYING OUT THE SERVICES

- 6.1 The Provider shall provide the Services to the Council for the duration of this Contract with reasonable skill, care and diligence, to the reasonable satisfaction of the Council and in accordance with the provisions of this Contract (including, without limitation, the Specification).
- 6.2 In the event that the Provider does not comply with the provisions of Condition 6.1 in any way, the Council may serve the Provider with a notice in writing setting out the details of the Provider's default (a Default Notice).
- 6.3 The Provider shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Council's prior consent.

- 6.4 Where any access to the Premises is necessary in connection with any delivery or installation the Provider and the Provider's sub-contractors shall at all times comply with the reasonable requirements of the Council.
- 6.5 Access to the Premises shall not be exclusive to the Provider but only such as shall enable the Provider to carry out the Services concurrently with the execution of work by others. The Provider shall co-operate with such others as the Council may reasonably require.
- 6.6 The Council shall have the power at any time during the term of the Contract to order in writing:
- (a) the removal from the Premises of any Goods or 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 Goods or 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.
- 6.7 The Provider shall forthwith comply with any order made under Condition 6.6.

- 6.8 On completion of the Services the Provider shall remove the Provider's plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Goods or Services and leave the Premises in a neat and tidy condition.
- 6.9 The Provider shall, if required to do so by the Council, prepare and submit to the Council a draft of any report or other deliverable prior to delivering the report or other deliverable in final form. Where the Council reasonably requests any amendments to the draft report or other deliverable the Provider shall incorporate those amendments into the final report or other deliverable.

7. HEALTH AND SAFETY

- 7.1 The Provider shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to the Council, whether specifically or generally. The Provider shall indemnify the

Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this condition.

7.2 The Provider represents and warrants to the Council that the Provider is satisfied that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that the Provider has made available to the Council adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health.

7.3 Without prejudice to the generality of Condition 7.2, the Provider 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 Conditions 7.1 or 7.2.

8. SOCIAL CARE SERVICES – COMPLAINTS

8.1 Providers of social care services (whether registered with the Care Inspectorate or not) must provide at all times a robust complaints procedure which complies with the Scottish Public Services' Ombudsman's

Complaint Handling Procedure, as amended from time to time.

8.2 Providers of social care services should set out expectations around complaint handling in any service agreement with service users.

9. GOODS

9.1 The Provider shall produce the Goods to the reasonable satisfaction of the Council and warrants that the Goods shall:

(a) conform in all respects with any particulars specified in the Contract and in any variations thereto;

(b) conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force; and

(c) be fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose made known to the Provider by the Council and the Council relies on the skill and judgement of the Provider in the supply of the Goods and the execution of the Contract.

10. DELIVERY AND INSPECTION

10.1 The Goods shall be delivered to the place named in the Contract. Any access to premises and any labour and equipment that may be provided by the Council in

connection with delivery shall be provided without acceptance by the Council of any liability whatsoever and the Provider shall indemnify the Council in respect of any 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 or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Provider or any of the Provider's sub-contractors.

10.2 The time of delivery of the Goods shall be of the essence and failure to deliver within the time promised or specified shall enable the Council (at the Council's option) to be released from any obligation to accept and pay for the Goods and/or to cancel all or part of the Contract therefor, in either case without prejudice to the Council's other rights and remedies.

10.3 Property and risk in the Goods shall without prejudice to any of the rights or remedies of the Council (including without limitation the Council's rights and remedies under this Condition) pass to the Council at the time of delivery.

10.4 On dispatch of any consignment of the Goods the Provider shall send to the Council at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and

volume. The Provider shall free of charge and as quickly as possible either repair or replace (as the Council 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 Council provided that:

(a) in the case of damage to such Goods in transit the Council shall within 30 days of delivery give notice to the Provider that the Goods have been damaged;

(b) in the case of non-delivery the Council shall (provided that the Council has been advised of the dispatch of the Goods) within 10 days of the notified date of delivery give notice to the Provider that the Goods have not been delivered.

10.5 The Provider shall permit the Council or the Council's authorised representatives to make any inspections or tests of the Goods the Council may reasonably require and the Provider shall afford all reasonable facilities and assistance free of charge at the Provider's or Council's 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 Council of any rights or remedies in respect of the Goods.

10.6 The Council may by written notice to the Provider reject any of the Goods which fail to meet

the requirements specified in the Specification or otherwise in the Contract. Such notice shall be given within a reasonable time after delivery to the Council of the Goods concerned. If the Council shall reject any of the Goods pursuant to this Condition the Council shall be entitled (without prejudice to its other rights and remedies) either:

- (a) to have the Goods concerned as quickly as possible either repaired by the Provider or (as the Council shall elect) replaced by the Provider with Goods which comply in all respects with the Specification; or
- (b) to obtain a refund from the Provider in respect of the Goods concerned.

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

10.8 Any Goods rejected or returned by the Council as described in Conditions 10.6 or 10.7 shall be returned to the Provider at the Provider's risk and expense.

10.9 The Goods shall be packed and marked in a proper manner and in accordance with the Council's instructions and any statutory requirements and any requirements of the carriers. In addition the Goods shall be marked with the Purchase Order Number (if any), 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 Provider shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this Condition.

10.10 All packaging materials will be considered non-returnable and will be destroyed unless the Provider's advice note states that such materials will be charged for unless returned. The Council accepts no liability in respect of the non-arrival at the Provider's Premises of empty packages returned by the Council unless the Provider shall within ten days of receiving notice from the Council that the packages have been dispatched notify the Council of such non-arrival.

10.11 The Provider represents and warrants that the maximum use has been made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packing, where these fulfil other packing specifications.

11. TIME OF PERFORMANCE

11.1 The Provider shall begin performing the Services on the date stated in the Specification and shall complete the Services by the date stated in the Specification or continue to perform them for the period stated in the Specification (whichever is applicable). Time of performance of the Services shall be of the essence and failure to perform the Services within the time promised or specified shall enable the Council (at the Council's option) to be released from any obligation to accept and pay for the Services and/or to cancel all or part of the Contract therefor, in either case without prejudice to the Council's other rights and remedies. The Council may by written notice require the Provider to execute the Services in such order as the Council may decide. In the absence of such notice the Provider shall submit such detailed programmes of work and progress reports as the Council may from time to time require.

12. PAYMENT

12.1 Every sales invoice submitted must clearly detail the order references provided at the time of order (Purchase Order

number, delivery point, delivery date, cost code, etc).

12.2 Payment in respect of Purchasing Card transactions shall normally be made within 3 working days of the transaction being processed by the Provider and under no circumstances shall the Provider delay processing Purchasing Card transactions by more than 24 hours.

12.3 No payment shall be made in respect of consignment notes or for any Goods not covered by a Purchase Order or Purchasing Card transaction.

12.4 All payments due shall be made in Sterling.

12.5 For Services, unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of Valid Invoices, submitted monthly in arrears, for work completed to the satisfaction of the Council.

12.6 For Goods, the Provider shall render a separate invoice in respect of each consignment delivered under the Contract unless the Council has specified a requirement for consolidated billing or agreement has been reached in respect of self-billing via Easybuy. Payment shall be due 30 days after receipt of the Goods or the correct Valid Invoice therefor, whichever is the later.

12.7 The Price of the Goods and any related Services shall be as stated in the Contract and no increase will be accepted by the Council unless agreed by the

Council in writing before the commencement of performance of the Contract.

12.8 Notwithstanding Condition 22 of this Contract the Provider may assign to another person (an "assignee") the right to receive payment of the Price or any part thereof due to the Provider under this Contract subject to (i) deduction of sums in respect of which the Council exercises its right of recovery under Condition 22 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 Provider 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.

12.9 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

13. FREE-ISSUE MATERIALS

13.1 Where the Council for the purpose of the Contract issues materials free of charge to the Provider such materials shall be and remain the property of the Council. The Provider shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract.

The Provider 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 Provider or any of the Provider's servants, agents or sub- contractors shall be made good at the Provider's expense. Without prejudice to any other of the rights of the Council, the Provider shall deliver up such materials whether processed or not to the Council on demand.

14. AUDIT & RECORDS MANAGEMENT

14.1 The Provider shall keep and maintain all records created or to be created by the Provider during the Term which relate to this Contract, including, without prejudice to the foregoing generality, records of all expenditures which are reimbursable by the Council and of the hours worked and costs incurred in connection with any employees of the Service Provider paid by the Council on a time charge basis ("the Records") until 5 years after the Contract has been completed.. The Provider shall on request afford the Council or the Council's representatives such access to the Records as may be required by the Council in connection with the Contract.

14.2 The provisions of this Condition 14 shall apply during the continuance of this Contract and after its termination howsoever arising.

14.3 The Provider shall, for the duration of this Contract, provide the Council with all assistance reasonably requested by the Council to assist the Council in complying with its obligations under the Public Records (Scotland) Act 2011 and with the Council's records management plan where such compliance is in respect of the Records. This assistance will be at no cost to the Council.

14.4 Within 28 days of written request by the Council, the Provider shall transfer the Records 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 Act 1998 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 Council. The Provider 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 Council on the same terms.

14.5 If the Provider 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 any party, or if a receiver, administrator or administrative receiver is appointed over the whole or any part of its assets or if either party goes into liquidation (whether

voluntary or compulsorily) otherwise than for the purposes of amalgamation or reconstruction or any form of execution levied upon its assets, then immediately on the occurrence of any of these events, the Records shall be deemed to be held on trust by the Provider on behalf of the Council. The Provider shall thereafter, if and when so required by the Council, transfer the records in question to the Council, such transfer to be on the same terms as would apply to a transfer made in terms of clause 14.4.

15. PREVENTION OF CORRUPTION

The Provider shall comply with all the requirements of the Bribery Act 2010 and any form of guidance issued in respect of the Bribery Act 2010 and the Council's written policies on such matters. The Council reserves the right to cancel the Contract without incurring any penalty whatsoever and to recover from the Provider the amount of loss resulting from such cancellation if the Provider or his representative (whether with or without the knowledge of the Provider) shall have acted in a manner contrary to the requirements under the Bribery Act 2010 and/or the Council's written policies on such matters in respect of any direct or indirect business carried out for the purposes of the Contract with the Council.

16. PATENTS, INFORMATION AND COPYRIGHT

- 16.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Provider or any employee, agent or subcontractor of the Provider:
- (a) in the course of performing the Services; or
 - (b) exclusively for the purpose of performing the Services

shall vest in the Council on creation.

- 16.2 The Provider hereby grants to the Council a perpetual, irrevocable, transferable, sub-licensable, royalty free licence to all Intellectual Property owned by or licensed to the Provider to the extent necessary or desirable for the use and exploitation of the Intellectual Property referred to in Condition 16.1.
- 16.3 The Provider shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services or omissions or by the use of the Intellectual Property referred to in Conditions 16.1 or 16.2, except to the extent that they have been caused by or contributed to by the Council's acts.

16.4 The Provider shall do all such acts as the Council requires to give the Council the benefit of this Condition 16.

16.5 The provisions of this Condition 16 shall apply during the continuance of this Contract and after its termination howsoever arising.

17. INDEMNITY, INSURANCE AND LIABILITY

17.1 Without prejudice to any rights or remedies of the Council the Provider shall indemnify the Council against all actions, 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 Provider.

17.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Provider (in respect of which the indemnity in Condition 17.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Council) the indemnity contained in Condition 17.1 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.

17.3 For the term of the Contract and for five years thereafter the Provider shall have in force and shall require any sub-contractor

to have in force with an insurance company or companies acceptable to the Council and with a scope of cover and level of uninsured excess acceptable to the Council:

- (a) employer's liability insurance in accordance with any legal requirements for the time being in force, and
- (b) public liability insurance for such sum and range of cover as the Provider deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions 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) such additional insurance and such other insurance as may be required by the Council as part of the Specification.

17.4 The policy or policies of insurance referred to in Condition 17.3 shall be shown to the Council whenever the Council requests, together with satisfactory evidence of payment of premiums, including the latest premium due.

17.5 Subject to Conditions 17.8 and 17.9, neither party shall be liable to the other party (as far as permitted by law) for indirect, special or consequential loss or

damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

17.6 Subject to Condition 17.8, the Council's total aggregate liability in respect of all claims, losses or damages, whether arising from delict (including without limitation negligence), breach of contract or otherwise under or in connection with this Contract (other than a failure to pay any of the Price that is properly due and payable and for which the Council shall remain fully liable), shall in no event exceed £250,000 in each calendar year or, if lower, 50% of the aggregate Price paid under or pursuant to this Contract in the calendar year in respect of which the claim arises.

17.7 Subject to Condition 17.8, the Provider's total aggregate liability:

17.7.1 in respect of Conditions 7.3, 16.3, 17.10, 18.6 and 28.4 is unlimited;

17.7.2 for all loss, destruction, corruption, degradation, inaccuracy or damage to data caused by the Provider's default or breach of this Contract shall be £1,000,000 in any calendar year;

17.7.3 for all loss of or damage to the Council's premises, property or assets (including

technical infrastructure, assets or equipment but excluding any loss or damage to the Council's data or any other data) of the Council caused by the Provider's default or breach of this Contract shall in no event exceed £10,000,000 in any calendar year; and

17.7.4 in respect of all other claims, losses or damages, whether arising from delict (including negligence), breach of contract or otherwise under or in connection with this Contract, shall in no event exceed £5,000,000 in each calendar year or, if greater, 200% of the aggregate Price paid under or pursuant to this Contract in the calendar year in respect of which the claim arises.

17.8 Notwithstanding any other provision of this Contract neither party limits or excludes its liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence;
- (c) breach of any obligation as to title implied by statute; or
- (d) any other act or omission, liability for which may not be limited under any applicable law.

17.9 Subject to the financial limits of liability contained in Condition 17.7, the Council may, amongst other things, recover as a direct loss:

- (a) any additional operational and/or administrative costs and expenses arising from the Provider's default or breach of this Contract;
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Provider's default or breach of this Contract; and
- (c) the additional cost incurred by the Council of procuring replacement Goods or Services for the remainder of the term of the Contract.

17.10 The Provider (if an individual) represents that the Provider is regarded by both Her Majesty's Revenue and Customs and the Department for Work and Pensions as self-employed and accordingly shall indemnify the Council against any tax, national insurance contributions or similar impost for which the Council may be liable in respect of the Provider by reason of this Contract.

18. EQUAL OPPORTUNITIES/ DISCRIMINATION

18.1 In providing the Services, the Provider shall comply with equal opportunities and the public sector equality duty and shall ensure compliance with the Council's written policies on

such matters and with all laws, regulations and guidance from time to time applicable in such regard.

18.2 The Provider shall provide such information and documentation to the Council as the Council may reasonably require from time to time for the purposes of:

18.2.1 assessing the Provider's compliance with its obligations under this Condition;

18.2.2 enabling the Council to review diversity in employment data such as total staff in post, applications for posts, appointments to post, annual gender pay audits, promotions, performance reviews, training, disciplinary matters, grievances, tribunal matters and all other relevant information required for the Council to comply with its public sector equality duty; and

18.2.3 enabling the Council to review data in respect of complaints and satisfaction surveys in respect of the Provider's approach to equalities, diversity and human rights.

18.3 In delivering and reviewing the Services the Provider shall:

18.3.1 comply with the Council's public sector equality duty and shall have regard to any

guidance provided by Scottish Ministers for local authorities on the public sector equality duty (including assisting in or preparing reports in order to secure the Council's compliance with the public sector equality duty);

18.3.2 comply with reasonable requests for information or data in respect of the Council's public sector equality duty including where the Council undertakes an equalities impact assessment.

18.4 The Provider shall deliver the Services in a non-discriminatory manner that ensures fairness and equality to all users of the Services. The Provider recognises that the Council has a responsibility to monitor the extent to which the provision of the Services extends to groups who are at risk of social exclusion. The Provider agrees, where appropriate and practicable, to provide information to the Council in relation to employment and use of the Services by the following criteria:

- age;
- sex;
- sexual orientation;
- disability;
- religion or belief;
- race;
- marriage and civil partnership;
- pregnancy and maternity and
- gender reassignment.

18.5 The Provider shall not discriminate, whether directly or

indirectly and whether by way of victimisation or harassment, against any person on grounds of age, sex, sexual orientation, disability, religion or belief, race, marriage and civil partnership; pregnancy and maternity and gender reassignment contrary to the Equality Act 2010.

course of that investigation.

Where any such investigation is conducted or proceedings are brought under the Equality Act 2010, which arise directly or indirectly out of any act or omission of the Provider, its agents or sub-contractors, or the staff of the Provider, and where there is a finding against the Provider in such investigation or proceedings, the Provider shall indemnify the Council with respect to all costs, charges and expenses arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment of the Council may have been ordered or required to pay to a third party.

18.6 The Provider shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Provider under the legislation contained in the Equality Act 2010. Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Provider's performance of this Contract being in contravention of the Equality Act 2010, the Provider shall free of charge:

- 18.6.1 provide any information requested in the timescale allotted;
- 18.6.2 attend any meetings as required and permit the Provider's affected staff to attend;
- 18.6.3 promptly allow access to and investigation of any document or data deemed to be relevant;
- 18.6.4 allow itself and any staff of the Provider to appear as witness in any ensuring proceedings and
- 18.6.5 co-operate fully and promptly in every way required by the person or body conducting such investigation during the

18.7 In recognition of the Council's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies under the Equality Act 2010, the Provider may be subject to the requirement to complete a questionnaire and/or provide information to the Council's officers on the context and quality of the Provider's equalities and diversity policies and practice. Poor practice in regard may result in the Council issuing a mind to comply letter describing the nature of the improvement required and associated timescales.

18.8 In the event that the Provider enters into any subcontract in connection with this Contract, it shall impose obligations on its sub-contractors in proportionate and relevant terms substantially

similar to those imposed on it pursuant to this Condition.

19. BLACKLISTING

The Provider must not commit 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 commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this Condition is a material default which shall entitle the Council to terminate the Contract.

20. CONFIDENTIALITY AND FREEDOM OF INFORMATION

20.1 Subject always to the terms of the Freedom of Information (Scotland) Act 2002 (FOISA), the Provider shall not and shall ensure that it and its employees do not without the written consent of the Council during the period of this Contract or at any time thereafter divulge to any third party any information which comes into its or their possession in the course of providing the Services.

20.2 The Council is committed to meeting its responsibilities under FOISA. Accordingly, all information submitted to the Council may require to be disclosed or published by the Council. If the Provider considers that specific information provided to the Council is potentially exempt from disclosure under FOISA (where for example it is considered commercially

confidential) the Provider should identify exactly which information it considers to be exempt, state the period of sensitivity and provide justification for its assertions (for example identify what harm may result from disclosure). The Provider should note that the Council is not bound by the Provider's view and may in its absolute discretion disclose and / or publish any such information in order to comply with FOISA.

20.3 The provisions of this Condition 19 shall apply during the continuance of this Contract and after its termination howsoever arising.

21. TERM AND TERMINATION

21.1 The Contract shall take effect on the date set out in the Contract Acceptance Letter and shall expire on the date set out in the Contract Acceptance Letter (both dates inclusive) unless it is otherwise terminated in accordance with the provisions of the Contract or otherwise lawfully terminated or extended including, without limitation, for any extension periods as set out in the Contract Acceptance Letter. The Council may extend this Contract beyond the initial term set out in the Contract Acceptance Letter by a further period or periods referred to in the Contract Acceptance letter (each an Extension Period). If the Council wishes to extend this Contract, it shall give the Provider at least one (1) month's written notice of such intention before the expiry of the initial term or Extension Period.

21.2 The Provider shall notify the Council in writing immediately upon the occurrence of any of the following events:

- (a) where the Provider is an individual, if a petition is presented for the Provider's bankruptcy or the sequestration of the Provider's estate or a criminal bankruptcy order is made against the Provider, or the Provider 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 Provider's affairs; or
- (b) where the Provider 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 Provider to be wound up as an unregistered company; or
- (c) where the Provider 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.

21.3 On or following the occurrence of any of the following: (a) any of the events described in Condition 21.2 or, (b) if the Provider 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 28 days of receipt of notice from the Council (a Remediation Notice) to do so or if a Consistent Failure has occurred or, (c) where the Provider is an individual if the Provider shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983 or of Part V of the Mental Health (Scotland) Act 1984, or (d) if any act or omission by the Provider or any sub-contractor causes, or in the Council's reasonable opinion, is likely to cause, adverse publicity or damage to the reputation of the Council, the Council shall be entitled to terminate this Contract by notice to the Provider 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 Provider) all materials, plant and equipment on the Premises belonging to the Provider, and the Council shall not be liable to make any further payment to the Provider 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 Provider 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 Provider, the difference shall be recoverable by the Council from the Provider.

21.4 In addition to the Council's rights of termination under Condition 21.3, the Council shall be entitled to terminate this Contract by giving to the Provider not less than 30 days' notice to that effect.

21.5 Termination under Conditions 21.3 and 21.4 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 Conditions 7, 9, 10, 13, 16, 17, 18, 20, 27, 28 and 29.

22. RECOVERY OF SUMS DUE

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

23. ASSIGNATION AND SUB-CONTRACTING

23.1 The Provider shall not assign or sub-contract any portion of the Contract without the prior written consent of the Council. Sub-contracting any part of the Contract shall not relieve the Provider of any obligation or duty attributable to the Provider under the Contract or these conditions.

23.2 No sub-contracting by the Provider shall in any way relieve the Provider of any of his responsibilities under the Contract.

23.3 Where the Provider enters into a sub-contract it must ensure that a provision is included which:

- (a) requires payment to be made of all sums due by the Provider 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 Provider in respect of Goods or Services and the sub-contractor's invoice relates to such Goods or Services then, to that extent, the invoice must be treated as valid and, provided the Provider 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

Provider, payment must be made to the sub-contractor without deduction;

- (b) 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
- (c) is in the same terms as that set out in this Condition 23 subject only to modification to refer to the correct designation of the equivalent party as the Provider and sub-contractor as the case may be.

24. NOTICES

Any notice, demand or communication in connection with this Contract shall be in writing, marked for the attention of the Chief Governance Officer or the Council's Head of the relevant services (in the case of the Council) or the Finance Director (in the case of the Provider) and delivered personally or sent by pre-paid first class post to the recipient's address as set out in the Contract Acceptance Letter or to any other address which the recipient has notified in writing to the sender prior to despatch. The notice, demand or communication is deemed given:

- (a) if delivered personally, at the time of delivery to the address provided for in

- (b) this Contract; or
- (b) if sent by pre-paid first class post, on the second Working Day after posting it;

provided that, if it is delivered personally on a day which is not a Working Day or after 4pm on any Working Day, it shall instead be deemed to have been given or made on the next Working Day.

25. DISPUTES

25.1 In the event of any dispute between the parties relating to the terms and conditions of this Contract, the supply of Goods or the provision of the Services either party may serve notice on the other outlining the terms of the dispute. Such notice shall propose a time and place for a meeting between the parties' representatives where they shall attempt to resolve the dispute. The other party shall respond to such a notice within five Working Days of receipt.

25.2 If the matter is not resolved within ten Working Days of the service of the notice, the matter may be referred by either party to the appropriate senior officer in the Council and the appropriate senior officer in the Provider's organisation for resolution. If the dispute is not resolved within a further ten Working Days the matter may be referred by mutual agreement refer the dispute for mediation, arbitration or other alternative dispute resolution but neither party shall be obliged to agree to do so.

25.3 Nothing in this dispute resolution procedure shall prevent the parties from seeking from any

court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

26. ENTIRE AGREEMENT

The Contract constitutes the entire agreement between the parties. The Contract supersedes all prior negotiations between the parties and all representations and undertakings made by one party to the other, whether written or oral, except that this condition shall not exclude liability in respect of any fraud or fraudulent misrepresentation.

27. DATA PROTECTION

27.1 Each party warrants to the other that it shall comply with all the requirements of the Data Protection Act 1998 (DPA).

27.2 Without prejudice to Condition 27.1, the Provider shall:

- (a) ensure that it has in place appropriate technical and contractual measures to ensure the security of any personal data (as defined in the DPA) that it acquires from the Council or has access to by virtue of providing the Services (Personal Data) (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

- (b) act only on instructions from the Council in relation to its processing of the Personal Data;

- (c) shall process the Personal Data exclusively for the purposes of providing the Services to the Council and shall not share the Personal Data with third parties;

- (d) shall not transfer Personal Data to countries outside the European Economic Area; and

- (e) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.

28. TUPE

28.1 The Provider recognises that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014) (TUPE) may apply in respect of the Contract, and that a relevant transfer for the purposes of the Regulations may occur upon: (a) the commencement of the Contract; and/or (b) the termination or expiry of the Contract.

28.2 In addition to complying with its obligations under TUPE to provide employee liability information, during the period of six months preceding the expiry

of the Contract or after the Council has given notice to terminate the Contract or after the occurrence of any of the events set out in clause 21.1, and within 20 Working Days of being so requested by the Council, the Provider shall fully and accurately disclose to the Council or to any person nominated by the Council information relating to employees engaged in providing the Services in relation to the Contract in particular, but not necessarily restricted to, the following:

- (a) the total number of personnel whose employment with the Provider is at risk of termination on the expiry or termination of this Contract, but for any operation of law; and
- (b) for each person, their age and gender, details of their salary and benefits, date of commencement of continuous employment, any pay settlements covering that person which relate to future dates but which have already been agreed and their statutory and all other redundancy entitlements (the names of individual members of staff do not have to be given); and
- (c) information about the other terms and conditions on which the affected staff are employed; and
- (d) details of pensions entitlements, if any.

28.3 The Provider shall permit the Council to use the information for the purposes of TUPE and of re-tendering, which shall include such disclosure to potential replacement providers as the Council considers appropriate in connection with any re-tendering. The Provider will cooperate with the re-tendering of the contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.

28.4 The Provider shall indemnify the Council and any new provider (the replacement provider) appointed by the Council and keep the Council and any replacement provider appointed by the Council indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses awarded against or incurred or paid by the Council or any replacement provider appointed by the Council arising from or in connection with the employment or engagement of any person by the Provider (or, as appropriate, its subcontractor) at any time during the term of the Contract in respect of the provision of the Services, or the termination of such employment or engagement during any period up to the date of expiry or termination of the Contract and/or in respect of any other claim under TUPE arising from an act or omission of the Provider (or its subcontractor).

28.5 In the event that the information provided by the Provider in

accordance with this condition 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 Provider becoming aware that the information originally given was inaccurate, the Provider shall notify the Council of the inaccuracies and provide the amended information. The Provider shall be liable for any increase in costs the Council may incur as a result of any inaccurate or late production of data.

- 28.6 The provisions of this Condition 28 shall apply during the continuance of this Contract and after its termination howsoever arising.

29. TRANSITION PROVISIONS

- 29.1 At the termination of the Contract (and howsoever arising) the Provider shall promptly deliver to the Council upon request all the Council's property (including but not limited to materials, documents, information, access keys) in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors.
- 29.2 At the termination of the Contract (howsoever arising) and after the termination of the Contract the Provider shall provide assistance to the Council and any new provider appointed by the Council to continue or take over the performance of the Contract in order to ensure an

effective handover of all work then in progress. Where the termination of the Contract arises due to the Provider's default, the Provider shall provide such assistance free of charge. Otherwise the Council shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs. In appropriate circumstances, 3 months prior to the termination of the Contract the Provider shall assist in the implementation of any exit plan proposed by the Council to ensure the continuity of the Services after the date of termination of the Contract.

30. GOVERNING LAW

- 30.1 These conditions shall be governed by and construed in accordance with Scottish law and the Provider hereby irrevocably submits to the jurisdiction of the Scottish courts.

31. COMMUNITY BENEFITS

- 31.1 In the production and provision of the Goods and Services, the Provider shall ensure that it delivers the community benefits as set out in the Provider's tender.
- 31.2 The Provider shall provide such information as may be required in the reasonable opinion of the Council to demonstrate the delivery of the community benefits referred to in Condition 31.1 above.
- 31.3 If in the Council's reasonable opinion from time to time the Provider has not provided the

community benefits in accordance with the Provider's tender the Council shall inform the Provider and the Provider shall automatically credit the Council with an amount equivalent to the value of the community benefit which has not been provided, calculated in accordance with the Pricing Schedule or otherwise as part of the Council's evaluation of the Provider's tender. Such credits shall be shown as a deduction from the amount due from the Council to the Provider in the next invoice then due to be issued under this Contract. If no invoice is due to be issued then the Provider shall issue a credit note against the previous invoice and the amount equivalent to the value of the community benefit which has not been provided shall be repayable by the Provider as a debt within 10 Working Days of the Council's request.

32. KPIs

32.1 Where any Service or Goods are stated in the Specification or otherwise to be subject to a specific service level or key performance indicators (together referred to as KPIs), the Provider shall provide those Goods and Services in such a manner as will ensure that it complies with those KPIs and shall pay the Council such service credits or other credits as may be specified in the Specification or elsewhere in the tender documentation.

33. SUSTAINABILITY

33.1 The Provider must assist the Council in achieving Sustainable

Procurement and comply with any written policies on such matters. The Provider must assist the Council through its procurement and management of suppliers, inter alia, to

- (a) Deliver community benefits;
- (b) Minimise (carbon based) energy use;
- (c) Minimise water use;
- (d) Minimise the use of raw materials;
- (e) Minimise waste;
- (f) Use recycled packaging, where practicable, and minimise, reuse and recycle packaging;
- (g) Minimise the release of greenhouse gases which contribute to climate change;
- (h) Prepare for and adapt to the anticipated impacts of climate change so as to minimise the risk of disruption and the need to take remedial measures;
- (i) Minimise pollution to air, water and land;
- (j) Conserve and enhance biodiversity;
- (k) Avoid genetically modified food or food with genetically modified ingredients; and
- (l) Consider animal welfare, and wherever possible, avoid goods which have been developed using animal testing.

The Provider will achieve this by developing, implementing, maintaining and regularly reporting on a Sustainable Development Action Plan which delivers the sustainability

requirements specified by the Council.

33.2 The Provider shall (and shall procure that the Provider's personnel shall) operate and actively sustain a clear ethical sourcing policy, spanning the full supply chain, which does not knowingly support the trade in slavery, prostitution, arms, illegal drugs and tobacco nor suppliers who breach International Labour Organisation conventions.

33.3 In respect of any services or supplies to the Council which require the provision or use of timber or timber products the Provider will procure such timber or timber products from legal and well managed forests which are certified under third party certification schemes and comply with the criteria set out in "UK Government Timber Procurement Policy: Criteria for Evaluating Category A Evidence".

33.4 The Provider shall provide on request by the Council such evidence that the timber source is sustainable as is set out in "UK Government Timber Procurement Policy: Framework for Evaluating Category B Evidence".

33.5 The Provider will where practicable use recycled timber and products using recycled timber.

33.6 The Provider will complete and submit to the Council on request the following documentary evidence that the timber and timber products have been procured sustainably:-

33.6.1 suppliers Forestry Stewardship Council, the Programme for Endorsement of Forest Certification Scheme or equivalent certificates;

33.6.2 delivery notes or invoices stating chain of custody numbers;

33.6.3 details of the Providers onsite timber monitoring arrangements; and

33.6.4 details of any action taken by the Provider to deal with non-compliance.

34. ROAD SAFETY

34.1 The Provider shall ensure that any vehicle larger than 7.5 tonnes unloaded weight used in the delivery of this Contract (1) bears prominent signage on its rear to warn cyclists of the dangers of passing the vehicle on the inside and (2) has Fresnel lenses fitted to the passenger window to improve 'nearside' driver visibility.

34.2 The Provider shall carry out a driving licence check with the DVLA for all drivers employed by it prior to the commencement of the Contract and shall carry out follow up checks on at least an annual basis for those with less than 6 points on their driving licence and at least quarterly checks for those with 6 or more points on their driving licence. The Provider shall not permit any driver disqualified from driving a

vehicle to be used in the delivery of this Contract.

34.3 The Provider shall provide the Council with an updated Collision Report, reporting all collisions between its vehicles used in the delivery of this

Contract and other road users, at the end of each quarter and within five working days of a written request from the Council to evidence that it is monitoring and investigating collisions on an ongoing basis.