



STANDARD TERMS AND CONDITIONS OF CONTRACT

Supplies

**Head of Administration and Legal Services
Finance and Corporate Resources
Floor 11 Council Offices
Almada Street
Hamilton
ML3 0AA**

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A GENERAL PROVISIONS

A1. Contract Period

- A1.1 The Contract shall start on the Commencement Date and shall continue until the Expiry Date when it will terminate automatically without the need for notice unless it is terminated earlier or extended in accordance with the provisions of the Contract.
- A1.2 The Council shall have the option to extend the Contract provided the Supplier was advised of this option in the Procurement Documents/Letter of Award.
- A1.3 Having carried out a review of the Supplier's performance as detailed in Clause C8 (Monitoring of Contract performance), the Council may, at their sole option, offer to extend the Contract for the period specified in the Procurement Documents/Letter of Award subject to the availability of funding and the Council having secured all necessary approvals and being satisfied with the Supplier's financial standing.
- A1.4 The provisions of the Contract will apply subject to any modification agreed between the Parties in terms of Clause C5 (Change Control Process) throughout any such Extended Period.

A2 Supplier's status

- A2.1 At all times during the Contract Period the Supplier shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

A3. Council's obligations

- A3.1 Save as otherwise expressly provided the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting party and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Supplier.
- A3.2 The Council shall provide such assistance and information as may reasonably be required by the Supplier to enable the Supplier to perform its obligations under the Contract.

A4. Notices

- A4.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- A4.2 Within 14 days of the Commencement Date both Parties will appoint a Nominated Person to receive communications in relation to the Contract and will notify the other Party of the contact details for their Nominated Person. These details will include the Nominated Person's name, business address, job title, email address (if appropriate) and a contact telephone number.

- A4.3 Any notice or other communication to be given by one Party (“the Notifying Party”) to the other (“the Receiving Party”) shall, where possible, in the first instance be sent by electronic mail to the email address of the Receiving Party’s Nominated Person. Provided the email is not returned as undeliverable it will be deemed to have been given four (4) hours after being sent. The Notifying Party will send the Receiving Party a letter confirming the dispatch of the electronic communication or if no electronic communication has been issued containing the notice/other communication by registered post / recorded delivery service addressed to the Receiving Party’s Nominated Person at their business address. Provided the letter is not returned as undelivered, it shall be deemed to have been given two (2) Working Days after the day on which the letter was posted or sooner where the Receiving Party acknowledges receipt of such letter . In proving service it shall be sufficient to prove that the envelope containing the notice or other communication was duly addressed to the Nominated Person at their business address and accepted by the Post Office for posting.
- A4.4 Either Party may change its address for service by serving a notice in accordance with this Clause.
- A4.5 Unless stated otherwise in the Procurement Documents or agreed between the Parties each Party’s Nominated Person shall also act as the appropriate contact point for any issues relating to the Contract or the Supplies to be provided under the Contract.

A5 Publicity

- A5.1 The Supplier shall not make any press announcements or publicise the Contract or any part thereof in any way, nor use the Council’s name or brand in any promotional or marketing material or announcements except with the Approval of the Council.
- A5.2 If so requested by the Council the notepaper and other written material of the Supplier and any Sub-contractors relating to the Contract shall carry only logos and markings which have received Council Approval. This may include, but shall not be limited to, such banner or logo as the Council shall use to identify the Contract from time to time. All publicity and marketing material produced by the Supplier (or its Sub-contractor) in relation to this Contract shall be submitted to the Council for Approval, and no such items shall be printed (other than for Approval purposes) until such Approval is received.

A6. Audit and access to records

- A6.1 The Supplier shall keep and maintain full and accurate records and accounts of the operation of this Contract in accordance with Good Industry Practice for a minimum period of 5 years following the date of expiry or termination of the Contract (or for such other period as stated in the Procurement Documents or agreed between the Parties)
- A6.2 The Supplier shall provide the Council with access to all relevant records, including administration, management and staff records, in connection with all reasonable purposes associated with the Contract during normal working hours. In making such requests the Council shall act reasonably and shall treat all records provided in response to such requests as strictly private and confidential. The Supplier shall co-operate fully with all Council staff and

other persons authorised by them for the purposes of ensuring and evaluating the Supplier's performance under the Contract.

- A6.3 If requested to do so by the Council the Supplier will provide the Council with any financial information the Council reasonable requires which could include, but is not limited to, a copy of its annual accounts and annual returns.
- A6.4 The Parties shall bear their own costs and expenses incurred in compliance with their respective obligations under this Clause A6.

A7 Conflict of Interest

- A7.1 The Supplier will not act for any person or body or otherwise in any way which conflicts actually or potentially with the Supplier's obligations in terms of the Contract.
- A7.2 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any of its Staff is placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict or a potential conflict, between the financial or personal interests of the Supplier and the duties owed to the Council under the provisions of this Contract.
- A7.3 The Supplier will notify the Council immediately of any actual or potential conflict of interest and the parties shall discuss whether the Supplier can continue to fulfil its obligations under the Contract or whether the Contract should be terminated
- A7.4 In the event of the Supplier failing to inform the Council of any actual or potential conflict of interest and the Council becoming aware of such actual or potential conflict of interest the Council shall be entitled to :-
(a) terminate the Contract in accordance with Clause E6 (Termination on Conflict of Interest); and/or
(b) take such other steps as it deems necessary.
- A7.5 The actions of the Council pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

A8. Best Value

- A8.1 In accordance with the Council's statutory duty to secure Best Value, the Parties will work together to deliver the Contract in such a way as to achieve Best Value.
- A8.2 The Council and the Supplier shall co-operate throughout the Contract Period to achieve Best Value. The results of the co-operation between the Parties shall be to benefit both themselves and continually ensure Best Value in terms of cost and quality in the delivery of this Contract. In co-operating the Parties will consider suggestions from the other. Clause C5 (Change control process) will apply to any changes agreed pursuant to this Clause A8.
- A8.3 Nothing in this Clause shall be construed as either a commitment by (i) the Supplier to incur or (ii) the Council to fund any additional costs for Supplies other than those which are contained within this Contract.

A9 Mistakes in information

A9.1 The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Supplier in connection with the delivery of the Supplies. The Supplier shall pay the Council any extra costs incurred by the Council as a result of any discrepancies, errors or omissions therein except where such discrepancies, errors or omissions originate from documentation supplied by the Council.

A10. Due diligence

A10.1 The Supplier shall be deemed to have:-

- (a) made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- (b) satisfied itself whether by inspection or having raised all relevant due diligence questions with the Council before the Commencement Date of all relevant details relating to :-
 - (i) the Council's requirements;
 - (ii) the Council's operating processes, procedures and working methods;
 - (iii) any existing contracts referred to in the Due Diligence Information that may be novated to, assigned to or managed by the Supplier under the Contract and/or which the Supplier will require the benefit of for the delivery of the Supplies

A10.2 The Supplier shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Council on the grounds that:-

- (a) any information, whether obtained from the Council or otherwise (including information made available by the Council) is incorrect or insufficient; or
- (b) it has misinterpreted any of the Council's requirements.

B PAYMENT AND ORDERING PROCEDURES

B1. Price

B1.1 In consideration of the Supplier's performance of its obligations under the Contract the Council shall pay the Price to the Supplier in accordance with Part 3 of the Schedule.

B2 Set –off

B2.1 The Council may set off any amount owed by the Council to the Supplier under this Contract against any amount owed by the Supplier to the Council under this or any other contract/agreement between the Council and the Supplier.

B2.2 Prior to exercising its right of set off in terms of Clause B2.1 the Council shall, within 20 Working Days of receipt of the relevant invoice, give notice to the Supplier setting out the Council's reasons for retaining the relevant amount.

B2.3 The Supplier shall make all payments due to the Council without any deduction whether by way of set off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Supplier.

B2.4 Any overpayment by either Party, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

B3 Price book

B3.1 Where requested by the Council and /or required in terms of the Procurement Documents the Supplier shall supply the Council with a Price Book at the Commencement Date for use by the Council on a regular basis throughout the Contract Period. In addition a duly revised Price Book will be provided by the Supplier to the Council immediately after a modification of the Price and/or the Specification takes effect.

B4 Price Review

B4.1 Where the Council has specified in the Procurement Documents that the Price shall remain fixed for a specified period from (and including) the Commencement Date the Price shall remain fixed for that period following which it will be subject to review at intervals to be agreed between the Parties unless specified otherwise in the Procurement Documents (“the Review Date”) provided the requirements of Clause C4 (Modification of the Contract) are met.

B4.2 The Parties shall at least 3 months prior to the Review Date follow the process set out in Clause C5 (Change Control Process) to determine whether any modification to the Price in terms of Clause C4 (Modification of the Contract) is justified.

B5 Price adjustment on extension of Contract Period

B5.1 In the event that the Council exercises its discretion to extend the Contract Period pursuant to clause A1.2 the Parties will follow the process set out in Clause C5 (Change Control Process) to determine whether any modification to the Price in terms of Clause C4 (Modification of the Contract) is justified.

B5.2 For the avoidance of doubt both Parties accept and acknowledge that any modification to the Price shall not have the effect of altering the economic balance of the Contract during the Extended Period in favour of the Supplier in a manner not provided for in the terms of the Contract.

B5.3 If a modification to the Price is agreed between the Council and the Supplier the revised Price will apply during the Extended Period.

B6. Ordering procedures

B6.1 The Council may during the Contract Period order Supplies from the Supplier by and in accordance with any specific requirements contained in a Purchase Order.

B6.2 Each Purchase Order is subject to and shall be deemed to incorporate the terms and conditions of this Contract to the exclusion of any terms and conditions which the Supplier may seek to impose under any quotation, confirmation of order, advice note, delivery note, invoice or similar document. By entering into this Contract the Supplier agrees to the application of the terms and conditions of this Contract. The Supplier and the Council agree that any other terms or conditions (whether or not inconsistent with the terms and conditions of this Contract) contained or referred to in any correspondence or any documentation submitted by the

Supplier or elsewhere implied by custom, practice or course of dealing shall not apply.

B6.3 The Supplier shall accept all Purchase Orders provided they comply with the terms of this Contract. Unless otherwise stated, or where the Council's electronic procurement system is unavailable, Purchase Orders will in all cases be placed electronically using the Council's electronic procurement system (iProcurement). Purchase Orders placed using any other means should not be accepted. The placing of a Purchase Order by the Council on the Supplier shall create a contract in respect of the relevant Supplies specified in the Purchase Order.

B6.4 For the avoidance of doubt, each Purchase Order shall survive the expiration of this Contract.

B7. Cancellation or variation of a Purchase Order

B7.1 Notwithstanding the provisions of Clause C5 (Change Control Process):-

- (a) any Purchase Order accepted by the Supplier may only be cancelled or varied by the Supplier at the sole discretion of the Council and on the condition that the Supplier shall indemnify the Council in full against all losses, costs, damages, charges and expenses directly and properly incurred by the Council as a result of such cancellation or variation; and
- (b) the Council may vary or cancel any Purchase Order in whole or in part by giving notice to the Supplier whereupon the Supplier shall discontinue all work in relation to that Purchase Order. The Council may cancel or vary any such Purchase Order:
 - (i) on the date of the Purchase Order without charge;
 - (ii) at any time following the date of the Purchase Order, subject to payment to the Supplier of such proportion of the Price as may be fair and reasonable having regard to the value of the work done by the Supplier in relation to that Purchase Order. For the avoidance of doubt, this shall not include any payment for anticipated profits or consequential loss. Any costs incurred by the Supplier must be substantiated and accompanied by evidence to this effect.

B8 Unauthorised provision

B8.1 The Supplier must not provide any Supplies to or for any department, officer or agent of the Council without first receiving a Purchase Order for such Supplies issued by an authorised officer of the Council.

B8.2 The Council will not be liable for the cost of any Supplies provided as the case may be by the Supplier unless such Supplies are detailed in the Contract/Purchase Order.

C. CONTROL OF THE CONTRACT

C1. Assignment

C1.1 The Supplier shall not be entitled to assign, novate or otherwise dispose of or create any trust ("Assign") in relation to any or all of their rights, obligations or liabilities under the Contract or any part thereof except with the Approval of the Council subject to:-

- (a) the Supplier's compliance with the requirements of this Clause;

- (b) the Council's compliance with its procedural requirements permitting assignation; and
 - (c) the Supplier satisfying the Council that the Assignee is not in one of the situations referred to in Regulation 58 of the Public Contracts (Scotland) Regulations 2015 and/or the Procurement (Scotland) Regulations 2016 which would have resulted in exclusion in a procurement exercise.
- C1.2 Where the Supplier proposes to Assign their rights and obligations under the Contract they shall give the Council not less than 6 weeks prior written notice of their intention.
- C1.3 To allow the Council to consider the Supplier's request the Supplier shall provide the Council with such information as it may reasonably request including but not limited to :-
 - (a) the name and address of the proposed Assignee together with its relevant company/organisation details (such as its registered office and company registration number);
 - (b) the proposed date of transfer and details of the nature of the legal relationship between the Supplier and proposed Assignee;
 - (c) evidence that the proposed Assignee can meet the Council's requirements; and
 - (d) appropriate financial information relative to the proposed Assignee to allow the Council to be satisfied as to their financial viability.
- C1.4 Until the completion of the Assignation or until the Contract with the Supplier is terminated:-
 - (a) the proposed Assignee must not deliver the Supplies or any part thereof and no payments will be made by the Council to the proposed Assignee; and
 - (b) the Supplier shall continue to be responsible for the performance of and shall be liable to the Council for the acts and omissions of any party to which it may Assign its obligations under the Contract as if they were the acts or omissions of the Supplier.
- C1.5 In the event that Approval is not granted to the Assignation or the Assignation does not proceed and the Supplier confirms in writing to the Council that they are unable to continue to deliver the Supplies to the reasonable satisfaction of the Council, either Party may terminate the Contract with immediate effect by issuing a Termination Notice.
- C1.6 The Council shall be entitled to Assign its rights and obligations under the Contract without requiring the consent of the Supplier.
- C1.7 The provisions of this Clause shall only apply in a business restructuring situation where the Supplier proposes to restructure their business in such a way that the restructuring affects the business' status or legal ownership. In these circumstances the Supplier shall give the Council not less than 6 weeks prior written notice of their intention to do so. For the purposes of this Clause the Council will treat the proposed restructured business as a proposed Assignee, and clauses C1.3 to C1.5 will apply.
- C1.8 Notwithstanding the provisions of Clause C1.1 the Supplier may assign the right to receive payment of the Price or any part thereof due to the Supplier

under this Contract. Any Assignment under this Clause C1.8 shall be subject to:-

- (a) reduction of any sums in respect of which the Council exercises its right of recovery under Clause B2 (Set Off);
- (b) all related rights of the Council under the Contract in relation to the recovery of sums due but unpaid; and
- (c) the Council receiving notification under Clauses C1.9 and C1.10.

C1.9 In the event that the Supplier assigns the right to receive the Price under Clause C1.8 the Supplier or the Assignee shall notify the Council in writing of the Assignment and the date upon which the Assignment becomes effective.

C1.10 The Supplier shall ensure that the Assignee notifies the Council of the Assignee's contact information and bank account details.

C1.11 The payment provisions set out in Part 3 of the Schedule shall continue to apply in all other respects after the Assignment and shall not be amended without the Approval of the Council.

C1.12 The Supplier and the Assignee shall comply with the requirements of TUPE and all relevant Law in relation to any Assignment in terms of this Clause C1.

C2. Sub-contracting

C2.1 The Supplier shall not be entitled to sub-contract their rights and obligations under the Contract or any part thereof except with the prior Approval of the Council subject to:-

- (a) the Supplier's compliance with the requirements of this clause;
- (b) the Council's compliance with its procedural requirements permitting sub-contracting; and
- (c) the Supplier satisfying the Council that the proposed Sub-contractor is not in one of the situations referred to in Regulation 58 of the Public Contracts (Scotland) Regulations 2015 and/or the Procurement (Scotland) Regulations 2016 which would have resulted in exclusion in a procurement exercise.

C2.2 Where the Supplier proposes to sub-contract their rights and obligations under the Contract they shall give the Council not less than 6 weeks prior written notice of their intention.

C2.3 To allow the Council to consider the Supplier's request to sub-contract the Contract the Supplier shall provide the Council with such information as the Council may reasonably request including but not limited to :-

- (a) The name and address of the proposed Sub - contractor together with its relevant company/organisation details (such as its registered office and company registration number);
- (b) Appropriate financial information relative to the proposed Sub - contractor to allow the Council to be satisfied as to the financial viability of the proposed Sub-contractor;
- (c) the part(s) of the Contract the Supplier proposes to subcontract;
- (d) the terms of the proposed Sub -contract; and
- (e) where appropriate, the monitoring measures to be put in place by the Supplier to ensure that the Sub - contractor complies with the terms of the Contract as if it was the Supplier.

- C2.4 Where the Council grants Approval to the appointment of a Subcontractor, the Supplier will:-
- (a) be responsible for the performance of and shall be liable to the Council for the acts and omissions of its Sub-contractors;
 - (b) ensure that any Sub-contractor appointed complies with the requirements of the Contract;
 - (c) ensure that a provision is included in any Sub -contract requiring the Subcontractor to apply for the Approval of the Council to further sub-contract the performance of the Contract; and
 - (d) provide the Council with a copy of the Sub-contract if requested to do so.

C2.5 Sub-contracting any part of the Contract shall not relieve the Supplier of any of its obligations or duties under the Contract.

C2.6 The Supplier and the Sub-contractor shall comply with the requirements of TUPE and all relevant Law in relation to any subcontracting in terms of this Clause C2.

C3. Waiver

C3.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not result in a lessening of the obligations established by the Contract and will in no way affect that party's right later to insist upon such performance or exercise any such right or remedy.

C3.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause A4 (Notices).

C3.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

C4. Modification of the Contract

C4.1 This Contract can only be modified in the following circumstances:-

- (a) where the Procurement Documents provided for modification to be made to the Contract terms irrespective of their monetary value provided that:-
 - (i) the scope and nature of possible modifications or options as well as the conditions under which they may be used have been stated in the Procurement Documents; and
 - (ii) there is no provision for modifications or options that would alter the overall nature of the Contract;
- (b) where the Council requires additional supplies that have become necessary where a change of supplier:-
 - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, supplies or installations; and
 - (ii) would cause significant inconvenience or substantial duplication of costs for the Councilprovided that any increase in the Price does not exceed 50% of the initial Price;

- (c) where all of the following conditions are fulfilled:-
 - (i) the need for modification has been brought about by circumstances which the Council, acting diligently, could not have foreseen;
 - (ii) the modification does not alter the overall nature of the Contract; and
 - (iii) any increase in the Price does not exceed 50% of the initial Price
- (d) where a Replacement Supplier replaces the original Supplier as a consequence of:-
 - (i) an unequivocal review clause or option which conforms to the requirements of Clause C4.1 (a); or
 - (ii) complete or partial succession into the position of the original Supplier following corporate restructuring including takeover, merger, acquisition or insolvency in terms of Clause C1.7 provided this does not entail other substantial modifications to the Contract;
- (e) where the modifications irrespective of their value are not substantial in terms of Clause C4.2; or
- (f) where the value of the modification is below both of the following values:-
 - (i) the relevant threshold as defined in Regulation 5 of the Public Contracts (Scotland) Regulations 2015 in force at the time of the modification; and
 - (ii) 10% of the initial value of the Contract

- C4.2 A modification of a contract during the Contract Period will be considered to be substantial for the purposes of Clause 4.1 (e) where:-
- (a) the modification renders the modified contract materially different in character from the original Contract;
 - (b) the modification introduces conditions which had they been part of the initial procurement procedure would have:-
 - (i) allowed for the admission of candidates other than those initially selected;
 - (ii) allowed for the acceptance of a tender other than that originally accepted; or
 - (iii) attracted additional participants in the procurement procedure;
 - (c) the modification changes the economic balance of the modified contract in favour of the Supplier in a manner which was not provided for in the initial Contract;
 - (d) the modification extends the scope of the Contract considerably; or
 - (e) a new supplier replaces the existing Supplier in cases other than those provided for in Clause 4.1(d)

- C4.3 Where successive modifications are made:-
- (a) the limitations imposed by Clauses 4.1 (b) and 4.1 (c) (iii) shall apply to the value of each modification; and
 - (b) they shall not be aimed at circumventing the provisions of the Public Contracts (Scotland) Regulations 2015
 - (c) for the purposes of Clause 4.1(f) the value must be the net cumulative value of the successive modifications

- C4.4 For the purposes of calculating the price referred to in Clauses C4.1 (b) and (c) and the value referred to in Clause C4.1 (f) (ii) the updated figure shall be the reference figure in the event of the Contract containing an indexation clause.

- C4.5 The Parties will follow the change control process set out in Clause C5 (Change Control Process) when considering any modification in terms of this Clause C4.
- C4.6 The Parties will be prohibited from considering any modification which does not fall within the scope of this Clause C4 and the Council will be obliged to undertake a new procurement process for any such modifications.

C5 Change Control Process

- C5.1 In the event of either Party (“the Requesting Party”) considering that a modification of the Contract is required they shall serve a Change Control Notice on the other Party (“the Receiving Party”). Only modifications falling within the scope of Clause C4 (Modification of the Contract) can be considered.
- C5.2 The Change Control Notice will:-
- (a) set out the scope and nature of the proposed modification required by the Requesting Party in sufficient detail to allow the Receiving Party to consider whether any resultant change to the Price is required to implement the modification ;and
 - (b) require the Receiving Party, if appropriate, to provide the Requesting Party with details of any proposed change to the Price.
- C5.3 The Parties shall enter into good faith negotiations to agree the modification. Any resultant change in the Price shall, in all the circumstances, properly and fairly reflect the nature and extent of the proposed modification and shall in no circumstances exceed the limits set out in Clause C4 (Modification of the Contract). The Parties shall negotiate for:-
- (a) not more than 30 Working Days from the date
 - (b) such shorter period as the Requesting Party specified in the Change Control Notice where, in the reasonable opinion of the Requesting Party, the modification is necessary as a matter of urgency.
- C5.4 The Receiving Party shall within the negotiation period set out in clause C5.3 provide the Requesting Party with:-
- (a) a statement of opinion on the impact of the proposed modification on the performance of the Receiving Party’s obligations under the Contract;
 - (b) a description of any amendment required to the Contract to accommodate the proposed modification;
 - (c) an overview of the net costs of, or savings from, implementing the proposed modification as the case may be;
 - (d) any other information reasonably requested by the Requesting Party or appearing to the Receiving Party to be relevant; and
 - (e) if requested by the Requesting Party, an updated financial model, reflecting changes to all relevant costs from the scheduled date of implementation of the modification .
- C5.5 As soon as practicable after the Receiving Party provides the Requesting Party with the information required in terms of Clause C5.4, the Parties shall meet to discuss any issues arising from the Change Control Notice or from the information provided by the Receiving Party. For the avoidance of doubt, any discussions held between the Parties pursuant to this Clause C5.5 shall be without prejudice.

- C5.6 In the event of the Parties failing to agree the modification the Requesting Party may by written notice to the Receiving Party:-
- (a) agree that the Parties shall continue to perform their obligations under the Contract without the modification; or
 - (b) propose an amendment to the modification and the provisions of Clauses C5.1 – C5.5 shall apply; or
 - (c) accept an amendment to the modification proposed by the Receiving Party; or
 - (d) terminate the Contract by issuing a Termination Notice except where the Receiving Party has already provided all or part of the Supplies or where the Receiving Party can show evidence of substantial work being carried out to fulfil the requirements of the Contract. In such cases the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the dispute resolution procedure detailed at Clause G1 (Dispute Resolution).
- C5.7 If the Requesting Party has not confirmed that it wishes to proceed with the Change Control Notice within 30 calendar days of the date of the meeting in Clause C5.5 above or has not withdrawn the Change Control Notice within 30 calendar days of the date of such meeting then the Change Control Notice (or the relevant part) shall be deemed to have been withdrawn.
- C5.8 No amendment to or modification of the Contract shall have any effect unless it is in writing and signed by each of the Parties hereto.
- C5.9 Each Party shall bear their own costs in implementing the procedures set out in this Clause C5.
- C5.10 Notwithstanding the service of a Change Control Notice in accordance with the Change Control Process as detailed in this Clause C5 both Parties shall continue to fulfil their obligations under the Contract until such time as the Requesting Party confirms to the Receiving Party that it wishes to proceed with the Change Control Notice.
- C6 Change in Law**
- C6.1 The Supplier shall not be relieved of its obligation to provide the Supplies in accordance with the provisions of the Contract nor be entitled to an increase in the Price as a result of:-
- (a) a General Change in Law; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Supplies is reasonably foreseeable at the Commencement Date.
- C6.2 The Parties acknowledge that during the Contract Period the local government structure in the Council's administrative area may be subject to change. These administrative changes may give rise to the need for the Council to terminate this Contract and/or seek its potential variation with any successor or assignee of the Council. The Council shall not be liable for any loss of any kind including, but not limited to, lost opportunity that may arise as a consequence of local government reorganisation.
- C6.3 If a Specific Change in Law occurs or will occur during the Contract Period the Supplier will:-

- (a) notify the Council as soon as reasonably practicable of the likely effects of that change including whether any Change is required to the Supplies, the Price or the Contract; and
- (b) provide the Council with evidence:-
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Supplies; and
 - (iii) demonstrating that any expenditure that has been avoided has been taken into account in amending the Price

C6.4 Any variation in the Price or relief from the Supplier's obligations resulting from a Specific Change in Law shall be implemented in accordance with the change control process set out in Clause C5 (Change Control Process).

C7. Severability

C7.1 If any provision of the Contract is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

C7.2 In the event that any provision severed in terms of Clause C7.1 is so fundamental as to prevent the performance of the Contract or materially alters the balance of risks and rewards in this Contract either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to modify the Contract so that , as modified , it is valid and enforceable, preserves the balance of risks and rewards and, to the extent that it is possible, achieves the Parties' original commercial intentions.

C7.3 If the Parties are unable to agree the modifications within the period set out in the notice given under Clause C7.2 the matter shall be referred to dispute resolution as set out in Clause G1 (Dispute Resolution). If the Parties remain unable to resolve the matter following completion of the dispute resolution process either Party shall have the right to terminate the Contract by issuing a Termination Notice. Each Party will be responsible for their own costs in relation to any such termination.

C8. Monitoring of Contract performance

C8.1 The Supplier shall comply with any monitoring arrangements contained in Part 4 of the Schedule. The Supplier shall also comply with the Council's performance review and appraisal process contained in the Procurement Documents including, but not limited to, providing such data and information as the Supplier may be required to produce.

C8.2 Where required in terms of the Procurement Documents and/or Part 4 of the Schedule the Supplier shall:-

- (i) attend progress meetings with the Council at the frequency and times specified by the Council and shall ensure that its representatives are suitably qualified to attend such meetings; and
- (ii) submit progress reports to the Council at the times and in the format specified by the Council.

C9 Exit management

- C9.1 Where the Procurement Documents specified the requirement for an Exit Plan the Contractor shall deliver the Exit Plan to the Council within 20 Working Days of the Commencement Date.
- C9.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then the matter shall be referred for resolution by the dispute resolution procedure set out in Clause G1 (Dispute resolution).
- C9.3 During each Contract Year the Supplier shall review the Exit Plan and ensure that it is maintained and updated as may be necessary to reflect the then current provision of the Supplies. Any reviews of the Exit Plan under this Clause C4 shall be carried out in accordance with the provisions of Clause C5 (Change Control Process).

D LIABILITIES

D1 Liability and indemnity

Categories of Liability

- D1.1 Subject to the limits set out in Clauses D1.5 and D1.6 the Supplier shall be liable for the following types of loss, damage, cost or expense flowing from an act or Default of the Supplier which shall be regarded as direct and shall (without in any way limiting other categories of loss, damage, cost or expense which may be recoverable by the Council) be recoverable by the Council:-
- (a) personal injury to, disease or death of any person except to the extent that such personal injury, disease or death was caused by or contributed to by any negligence of the Council
 - (b) loss or damage to property (heritable or moveable) whether belonging to the Council or to any other person except to the extent that such loss or damage was caused by or contributed to by any negligence of the Council
 - (c) loss, destruction, corruption, degradation, inaccuracy or damage to the Council's data
 - (d) infringement of any Intellectual Property Rights involved in the Contract
 - (e) the additional operational and/or administrative costs and expenses arising from any Material Breach;
 - (f) the cost of procuring, implementing and operating any alternative or replacement supplies to the Supplies; and
 - (g) any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Laws.

Exclusions from liability

- D1.2 Neither Party excludes or limits its liability for
- (a) death or personal injury; or
 - (b) fraud or fraudulent misrepresentation by it or its staff;
- D1.3 In no event shall the Supplier be liable to the Council for any:-
- (a) loss of or damage to goodwill;
 - (b) loss of savings (whether anticipated or otherwise); and/or
 - (c) any indirect, special or consequential loss or damage.

- D1.4 In no event shall the Council be liable to the Supplier for any:-
- (a) loss of profits;
 - (b) loss of business;
 - (c) loss of revenue;
 - (d) loss of or damage to goodwill;
 - (e) loss of savings (whether anticipated or otherwise); and/or
 - (f) any indirect, special or consequential loss or damage.
- Limitations on liability*
- D1.5 The total aggregate liability of the Council to the Supplier in each Contract Year shall in relation to Defaults resulting in direct loss or damage to the Supplier's property be limited to a sum equal to the Price paid and payable in the Contract Year in which the Default occurred.
- D1.6 The liability of the Supplier to the Council shall:-
- (a) in relation to Defaults resulting in direct loss or damage to the Council's heritable property be unlimited;
 - (b) in relation to Defaults resulting in direct loss or damage to the Council's property (other than heritable property) be limited to Five Million (£5,000,000) Pounds Sterling for any event or series of connected events;
 - (c) in relation to loss, destruction, corruption, degradation, inaccuracy or damage to the Council's data or any other data or any copy of such Council data or other data be limited to Five Million (£5,000,000) Pounds Sterling for any event or series of connected events;
 - (d) in respect of all other claims, losses or damages be limited to a sum equivalent to one hundred and twenty five per cent (125%) of the Price paid and payable in the Contract Year in which the Default occurred.
- D1.7 The Parties agree that the total aggregate liability referred to in Clauses D1.5 - D1.6 shall apply:-
- (a) whether the liabilities are expressed as an indemnity or otherwise; and
 - (b) whether they arise in contract, delict, breach of statutory duty or otherwise.
- D1.8 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract.
- D2. Insurance**
- D2.1 The Supplier shall maintain in force with a reputable insurance company the policies of insurance for the indemnity limits and types of insurance specified by the Council in the Procurement Documents.
- D2.2 The Supplier shall (if requested to do so) exhibit to the Council no later than 14 calendar days after the Commencement Date current certificates of insurance in respect of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- D2.3 The Supplier shall (if requested to do so) exhibit to the Council any replacement policies of insurance entered into during the Contract Period prior to or at their commencement and shall (if requested to do so) exhibit to the Council any renewal receipts on demand during the Contract Period.

- D2.4 The provisions of any insurance or the amount of cover shall not relieve the Supplier or any approved Sub-contractors of any liabilities under the Contract.
- D2.5 In the event of any claim or potential claim being received by the Supplier from the Council or any other person in relation to the Contract they will:-
- (a) within 14 calendar days of such claim or potential claim first having been intimated to them provide details of the name and address of their insurance company together with the relevant policy number to the Council or such other person making a claim or potential claim;
 - (b) provide timeously to their insurance company all relevant details to enable such claim or potential claim to be processed with the minimum delay and
 - (c) update the Council on the progress and outcome of any claim submitted by such other person.
- D2.6 If, for whatever reason, the Supplier fails to put in place or maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of making such alternative arrangements from the Contractor.

D3. Warranties and representations

- D3.1 The Supplier warrants and represents that:-
- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company), licences and permissions (statutory, regulatory, contractual or otherwise) to enter into and perform its obligations under the Contract;
 - (b) that the Contract is executed by a duly authorised representative of the Supplier;
 - (c) in entering into the Contract it has not committed any Fraud;
 - (d) it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010
 - (e) as at the Commencement Date, all information, statements and representations contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to the execution of the Contract and it will advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
 - (f) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;
 - (g) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
 - (h) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge ,are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver ,liquidator ,manager ,administrator or similar officer in relation to any of the Supplier's assets or revenue;
 - (i) in the 3 years prior to the Commencement Date:

- (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (iii) it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- (j) it and its Subcontractors (if any) have all the necessary Staff, Equipment and experience necessary to properly perform its obligations under the Contract
- (k) it will at all times:-
 - (i) perform its obligations under the Contract with all reasonable care, skill and diligence and in accordance with Good Industry Practice
 - (ii) perform its obligations under the Contract within the timeframe agreed with the Council; and
- (l) the Supplies delivered under the Contract will be
 - (i) free from defects (manifest or latent) in materials and workmanship and remain so for 12 months after delivery
 - (ii) of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery
 - (iii) conform with the specifications (including the Specification), drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material supplied by or on behalf of the Supplier
 - (iv) free from design defects
 - (v) fit for any purpose held out by the Supplier or made known to the Supplier by the Council expressly or by implication and in this respect the Council relies on the Supplier's skill and judgement. The Council acknowledges and agrees that the Approval by the Council of any designs provided by the Supplier shall not relieve the Supplier of any of its obligations under this sub-clause.

- D3.2 The Supplier shall promptly notify the Council in writing:-
- (a) of any material detrimental changes to the organisation that impacts on its ongoing financial viability and/or its financial standing and/or credit rating;
 - (b) if it undergoes a Change of Control; and
 - (c) of any circumstances suggesting that a Change of Control is planned or in contemplation provided this does not contravene any law.

- D3.3 The Supplier acknowledges and agrees that:-
- (a) The warranties, representations and undertakings contained in the Contract are material and are designed to induce the Council into entering into the Contract; and
 - (b) The Council has been induced into entering into the Contract and in doing so has relied upon the warranties, representations and undertakings contained in the Contract.

D3.4 For the avoidance of doubt the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Council may have in respect of a breach of that provision by the Supplier.

D4. Guarantee

D4.1 Unless otherwise specified in the Procurement Documents the guarantee period applicable to the Supplies to be delivered shall be 12 Months from putting into service or 18 Months from delivery, whichever shall be the shorter, subject to any alternative guarantee arrangements agreed in writing between the Parties.

D4.2 In the event of any defect in the Supplies becoming apparent through proper and normal use of the Supplies within the guarantee period or within 30 calendar days of the end of such guarantee period the Council shall notify the Supplier in writing of such defect and specify a period within which such defect will be remedied.

D4.3 The Supplier shall, without prejudice to any other rights and remedies available to the Council upon receipt of such notice issued in terms of Clause D4.2 remedy such defects within the period specified in such notice (whether by repair or replacement as the Council shall elect) without cost to the Council.

D4.4 In the event of the Supplier failing to remedy the defect within the period specified in the notice the Council shall be entitled to notify the Guarantor of the Supplier's failure to remedy such defect and call upon the Guarantor to remedy same.

D4.5 If the requirement for a Guarantee to be provided has been included in the Procurement Documents the Supplier shall ensure that the Guarantor shall within 20 Working Days of the Commencement Date execute and deliver the Guarantee to the Council.

D4.6 The conditions specified in this Clause D4 are inserted solely for the Council's benefit. The Council may waive them, in whole or in part and with or without conditions, without prejudicing the Council's right to require subsequent fulfilment of such conditions.

D4.7 For the avoidance of doubt if Clause D4.5 has not been satisfied the Council reserve the right to terminate the Contract with immediate effect by issuing a Termination Notice to the Supplier.

E TERMINATION

E1 Termination on the occurrence of a Termination Event

E1.1 The Council shall terminate the Contract by issuing a Termination Notice to the Supplier where the Supplier has committed a Termination Event.

E1.2 Clause E1.1 shall apply where any person who is a member of the administrative, management or supervisory body of the Supplier or has powers of representation, decision or control in relation to the Supplier commits a Termination Event.

E1.3 The Termination Notice issued in terms of Clause E1.1 shall specify the particular Termination Event the Council is relying on to terminate the

Contract together with details of the consequences of termination as set out in Clause E14 (Consequences of expiry or termination).

E2 Termination on Material Breach

- E2.1 Notwithstanding the provisions of Clause E1.1 either Party may terminate the Contract by issuing a Termination Notice to the other Party where the other Party commits a Material Breach.
- E2.2 For the purposes of Clause E2.1 the Council shall be entitled to regard the Supplier as having committed a Material Breach where the Supplier is in one of the following situations:-
- (a) has committed a breach that is serious in the widest sense of having a serious effect on the benefit which the Council would otherwise derive from:-
 - (i) a substantial portion of the Contract; or
 - (ii) any of the obligations set out in sections C, D, H or X of the Contract; or
 - (iii) any of the obligations set out in any part of the Schedule;
 - (b) becomes bankrupt or is the subject of insolvency or winding up proceedings or its assets are to be administered by a liquidator/the court or where it enters into an arrangement with its creditors or where its business activities are to be suspended or it is in any analogous situation arising from a similar procedure under any other laws or regulations the Supplier may be subject to;
 - (c) is guilty of grave professional misconduct which renders its integrity questionable;
 - (d) enters into agreements with other parties aimed at distorting competition;
 - (e) has been guilty of serious misrepresentation in supplying the information required during the procurement process for the verification of the absence of grounds for exclusion or fulfilment of the selection criteria;
 - (f) has withheld information referred to in (e) or is not able to submit the supporting documents required under Regulation 60 of the Public Contracts (Scotland) Regulations 2015;
 - (g) has, at the time of the award of this Contract, been in one of the situations referred to in Regulation 58 of the Public Contracts (Scotland) Regulations 2015 and/or the Procurement (Scotland) Regulations 2016, and should have been excluded from the procurement procedure;
 - (h) seeks or has sought to unduly influence the Council's decision making process; and
 - (i) should not have been awarded the Contract in view of a serious infringement of the obligations under the Treaty and 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 TFEU.
- E2.3 For the avoidance of doubt the Parties agree that the situations set out in this Clause E2.2 are not exhaustive and shall not restrict the Council's right to terminate the Contract for Material Breach by serving a Termination Notice on the Contractor.

E3 Termination on Default

- E3.1 Without prejudice to any other rights or remedies that the Council has under the Contract where the Council considers that the Supplier has committed a

Default in relation to the Contract or any part thereof, the Council shall be entitled to serve a Formal Warning Notice on the Supplier

- (a) specifying that it is a Formal Warning Notice;
- (b) giving details of the Default and requiring it to be remedied;
- (c) setting a timescale for the Default to be remedied; and
- (d) stating that if the Default recurs two or more times within a 3 Month period after the date of service of the Formal Warning Notice, the Council will be entitled to consider it to be a Persistent Breach and issue a Termination Notice to the Supplier terminating the Contract with immediate effect.

E3.2 If:-

- (a) within the timescale specified in the Formal Warning Notice, the Supplier has failed to demonstrate to the Council's satisfaction that the Default specified has been remedied and that the Supplier has put in place measures to ensure that such Default does not recur; or
- (b) within a 3 Month period after the date of service of the Formal Warning Notice, the Supplier has failed to demonstrate to the satisfaction of the Council that the Default specified has not recurred two or more times within such 3 Month period and that the Supplier has put in place measures to ensure that such Default does not recur

then the Council may deem such failure to be a Persistent Breach for the purposes of Clause E3.1 (d).

E4 Termination on failure to pay

E4.1 If the Council fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within 28 calendar days of the date of such written notice, the Supplier may terminate the Contract by issuing a Termination Notice, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under Clause B2 (Set off).

E5. Termination on Change of Control

E5.1 The Council may terminate the Contract by notice in writing with immediate effect within six months of:-

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Council becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

E6 Termination on Conflict of Interest

E6.1 In the event of the Council receiving notification from the Supplier disclosing a conflict of interest in terms of Clause A7 (Conflict of Interest) and/or the Council becoming aware of an actual or potential conflict of interest between the pecuniary or personal interests of the Supplier and the Supplier's obligations under the Contract the Council shall :-

- (a) terminate the Contract immediately upon issuing a Termination Notice to the Supplier ; or
- (b) take such other steps as the Council may deem necessary without terminating the Contract.

E6.2 The actions of the Supplier pursuant to this Clause E6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

E7 Termination due to financial standing

- E7.1 The Council may terminate the Contract by issuing a Termination Notice with immediate effect:-
- (a) where (in the reasonable opinion of the Council) there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:-
 - (i) adversely impacts on the Supplier's ability to perform its obligations under the Contract; or
 - (ii) could reasonably be expected to have an adverse impact on the Supplier's ability to perform its obligations under the Contract.
 - (b) if the Supplier demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Supplier.

E8. Termination due to cancellation of registration

- E8.1 Where the Procurement Documents specified a requirement for Staff involved in the delivery of the Supplies or the Supplier to be registered with a particular Regulatory Body the Council shall be entitled to terminate this Contract with immediate effect by issuing a Termination Notice if:-
- (a) the Regulatory Body serves notice of their intention to cancel the Staff's/Supplier's registration irrespective of whether time for any objections to be lodged has expired or that objections have been made and a hearing is pending ;or
 - (b) an improvement notice is issued to the Staff/Supplier by the Regulatory Body and the period specified in the improvement notice has expired without the improvement having been made; or
 - (c) a sheriff issues an order to the Staff/Supplier cancelling its registration; or
 - (d) the Staff/Supplier has failed to comply with any conditions attached to its registration.

E9. Termination due to failure to have or maintain a licence

- E9.1 Where the Procurement Documents specified a requirement for the Supplier to have or maintain a licence the Council shall be entitled to terminate this Contract by issuing a Termination Notice with immediate effect if:-
- (a) the Supplier/Staff has failed to put in place a licence required under the Contract; or
 - (b) the Supplier/Staff has failed to maintain a licence required under the Contract throughout the Contract Period; or
 - (c) the Supplier has failed to provide sight of any licence required under the Contract after being requested to do so;
 - (d) the Supplier has failed to provide details of any conditions imposed on any licence required under the Contract; or
 - (e) conditions have been imposed on any licence required under the Contract which prevents the Supplier/Staff from delivering the Supplies.

E10 Partial termination, suspension and partial suspension

- E10.1 Where the Council has the right to terminate this Contract the Council shall be entitled to terminate or suspend all or part of this Contract provided always that, if the Council elects to terminate or suspend the Contract in part, the parts of this Contract not terminated or suspended can, in the Council's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of the Contract.

E10.2 Any suspension of this Contract under Clause E10.1 shall be for such period as the Council may specify in writing and without prejudice to any right of termination which has already accrued or subsequently accrues to the Council.

E10.3 The Parties shall seek to agree the effect of any modification necessitated by a partial termination, suspension or partial suspension in accordance with the procedure set out in Clause C5 (Change Control Process) including the effect that the partial termination, suspension or partial suspension may have on the delivery of the Supplies and the Price provided that the Supplier shall not be entitled to:-

- (a) an increase in the Price in respect of the delivery of the Supplies that have not been terminated if the partial termination arises due to the exercise of the Council's termination rights under Clause E ;and
- (b) reject the modification.

E11 Termination without cause

E11.1 The Council shall have the right to terminate the Contract at any time during the Contract Period even though the Supplier has not committed a Default by giving at least 3 Month's written notice to the Supplier. The Council may extend the period of notice at any time before it expires, subject to agreement between the Parties on the level of performance to be provided by the Supplier during the period of extension.

E11.2 Where the Council terminates the Contract under Clause E11.1 the Council shall indemnify the Supplier against any commitment, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit to the Council a fully itemised and costed list detailing any losses reasonably and properly incurred by the Supplier as a result of termination under Clause E11.1 together with any relevant supporting evidence. Any payment paid by the Council in accordance with this Clause E11.2 shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Council pursuant to Clause E11.1. The Supplier shall be excluded from all other rights and remedies it would otherwise have had in respect of any such termination.

E11.3 The Council shall not be liable under Clause E11.2 above to pay any sum which:-

- (a) was claimable under insurance held by the Supplier and the Supplier has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- (b) when added to any sums paid or due to the Supplier under the Contract exceeds the total sum that would have been payable to the Supplier if the Contract had not been terminated prior to the expiry of the Contract Period; or
- (c) is a claim by the Supplier for loss of profit, loss of or damage to goodwill due to early termination of the Contract; and
- (d) indirect or consequential loss or damage.

E12. Termination of a Sub-contract

- E12.1 The Council may require the Supplier to terminate a Sub-contract where it considers that:
- (a) the Sub-contractor may prejudice the provision of the Supplies or may be acting contrary to the interests of the Council;
 - (b) the Sub-contractor is considered to be unreliable and/or has not provided reasonable or any service to its other customers; and/or
 - (c) the Sub-contractor employs unfit persons or is itself an unfit person provided that such right shall not be exercised unreasonably, frivolously or vexatiously by the Council.
- E12.2 In the event that the Council exercises its right under Clause E12.1 the Supplier shall remain responsible for maintaining the provision of the Supplies.

E13. Force Majeure

- E13.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligation under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of the Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract either Party may terminate the Contract with immediate effect by notice in writing.
- E13.2 Any failure or delay by the Supplier in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- E13.3 The Party affected by the Force Majeure (“the Affected Party”) shall as soon as reasonably practicable issue a Force Majeure Notice which shall include details of the Force Majeure, its effect on the obligations of the affected Party and any action the Affected Party proposes to take to mitigate its effects.
- E13.4 If the Supplier is the Affected Party it shall not be able to claim relief under this Clause E11 to the extent that the consequences of the relevant Force Majeure:
- (a) are capable of being mitigated but the Supplier has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of supplies operating to the standards required by this Contract
- E13.5 As soon as practicable after the Affected Party issues the Force Majeure Notice and at regular intervals thereafter the Parties shall consult with each other in good faith and use all reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken to enable continued provision of the Supplies affected by the Force Majeure.
- E13.6 Where as a result of the Force Majeure:-
- (a) an Affected Party fails to perform its obligations in accordance with the Contract then during the continuance of the Force Majeure:-

- (i) the other Party shall not be entitled to exercise any rights to terminate the Contract in whole or in part as a result of such failure; and
- (ii) neither Party shall be liable for any Default arising as a result of such failure
- (b) the Supplier fails to perform its obligations in accordance with the Contract the Supplier shall be entitled to receive payment of the Price (or a proportionate payment of them) only to the extent that the Supplies (or part of the Supplies) continue to be provided in accordance with the terms of the Contract during the occurrence of the Force Majeure.

E14. Consequences of expiry or termination

E14.1 In any dispute, difference or question arising in respect of:-

- (a) the interpretation (except so far as the same may relate to the amount recoverable from the Supplier in respect of any loss resulting from such termination of the Contract) or
 - (b) the right of the Council to terminate the Contract; or
 - (c) the amount or value of any such financial or other advantage;
- the decision of the Council shall be final and conclusive.

E14.2 Unless otherwise expressly provided in the Contract:-

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Council or the Supplier under this Contract.

E14.3 At the expiry or earlier termination of the Contract Period (howsoever arising) or immediately after the Contract Period the Supplier shall provide assistance to the Council and any Replacement Supplier in order to ensure an effective handover of all work then in progress. Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide such assistance at no charge.

E14.4 At the expiry or termination of the Contract (howsoever arising) the Supplier shall in respect of all documents and information held by the Supplier under the Contract, at the sole option of the Council either:-

- (a) return all such documents and information to the Council within 10 Working Days of the date of such expiry or termination; or
- (b) destroy or delete all such documents and information within a specified time period determined by the Council and the Supplier shall provide confirmation of such destruction/deletion to the Council within 2 Working Days of the destruction/deletion.

E14.5 Notwithstanding the expiry or termination of the Contract Clauses D1 (Liability and indemnity), D2 (Insurance), D3 (Warranties and representations) and H6 (Disclosure and Freedom of Information) will continue in full force and effect and may be founded upon by either Party

E14.6 In the event of either Party terminating the Contract in terms of clause E the Council reserves the right to enter into a Contract on the same terms and

conditions with the Replacement Supplier. The Supplier shall have no right to object to the Council entering into a contract with the Replacement Supplier in the event of the Contract between the Council and the Supplier being terminated in terms of Clause E.

- E14.7 Where the Council terminates the Contract and enters into a contract with a Replacement Supplier the Council may recover from the Supplier the cost reasonably and properly incurred of entering into such contract and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. The Council shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Council to the Supplier (for Supplies delivered by the Supplier prior to termination and in accordance with the Contract but where payment has yet to be made by the Council) until the Council has established the final cost of making those other arrangements.
- E14.8 On the expiry or termination of this Contract or any part thereof the Supplier shall repay at once to the Council any monies paid up to and including such date of termination other than monies in respect of the Supplies or part thereof properly performed in accordance with this Contract

F. REMEDIES

F1. Council's remedies

- F1.1 Without prejudice to the Council's rights of termination or suspension set out in Clause E the Council may if the Supplier commits any Default (whether or not any part of the Supplies have been delivered) do any of the following:-
- (a) give the Supplier the opportunity to:-
 - (i) remedy the Default (at the Supplier's expense) together with any damage resulting from such Default; or
 - (ii) provide replacement Supplies and carry out any other necessary work to ensure that the terms of this Contract are fulfilled in accordance with the Council's instructions; or
 - (b) carry out itself, at the Supplier's expense, any work necessary to make the provision of the Supplies comply with this Contract;
- F1.2 Where the Council exercises any of its step in rights under Clause F1 or appoints a Replacement Supplier in terms of Clause E14 the Council shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Council (including any reasonable administration costs) in respect of the delivery of any part of the Supplies by the Council or by a third party. The Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Supplies.

F2. Supplier's remedies

- F2.1 If the Supplier has failed to comply with its obligations under this Contract and can demonstrate that this failure would not have occurred but for a specific act or omission by the Council then:-
- (a) the Supplier shall not be treated as being in breach of this Contract to the extent that the Supplier can demonstrate that the Supplier's failure was caused by the Council; and
 - (b) the Council shall not be entitled to exercise any rights that may arise as a result of the Supplier's failure to terminate this Contract.

- F2.2 The Supplier shall within ten (10) Working Days of becoming aware that a failure is likely to occur give the Council notice in writing setting out details of:-
- (a) the Supplier's failure;
 - (b) the Council's act or omission and its effect on the Supplier's ability to meet its obligations under this Contract; and
 - (c) the relief claimed by the Supplier.
- F2.3 Following receipt of the notice referred to in Clause F2.2 the Council shall as soon as reasonably practicable consider the nature of the Supplier's failure and the alleged act or omission of the Council and consider whether it agrees with the Supplier's assessment set out in the notice as to the effect of the relevant act or omission by the Council and its entitlement to relief, consulting with the Supplier where necessary.
- F2.4 Any modification that is required to the Contract as a result of this Clause F2 shall be implemented in accordance with the procedure set out in Clause C5 (Change Control Process).

F3 Remedies cumulative

- F3.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

G. DISPUTE RESOLUTION

G1. Dispute Resolution

- G1.1 Both parties will use their reasonable endeavours to resolve any dispute between them in respect of the Contract and to reach an amicable and workable resolution of the matter in dispute within 10 Working Days of either Party notifying the other of the dispute arising or within such other mutually acceptable timescale. Such endeavours shall involve the escalation of the dispute to the executive director (or equivalent) of each Party.
- G1.2 The Parties shall not institute court proceedings until the procedures set out in Clause G1.1 have been completed save that:-
- (a) either Party may at any time before court proceedings are commenced, serve a notice in terms of Clause A4 (Notices) on the other Party requiring the dispute to be referred to and resolved by arbitration in accordance with Clause G1.3 or by mediation in accordance with Clause G1.4 to which the other Party may consent as it sees fit; and
 - (b) if either Party intends to commence court proceedings it shall serve notice in terms of Clause A4 (Notices) of its intention on the other Party and that Party shall have 21 days following receipt of such notice to serve a reply requiring the dispute to be referred to and resolved by arbitration in accordance with Clause G1.3 or by mediation in accordance with Clause G1.4.
- G1.3 In the event that any arbitration proceedings are commenced in terms of Clause G1.2:-
- (a) the arbitration shall be governed by the provisions of the Arbitration (Scotland) Act 2010;

- (b) the Party giving notice to the other Party of their intention to submit the dispute to arbitration shall provide details of the issues to be resolved;
- (c) the Scottish Arbitration Rules in force at the date that the dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 Working Days of the notice being given in terms of Clause G1.3 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed in terms of the Scottish Arbitration Rules; and
- (e) the arbitration proceedings shall be governed by and interpreted in accordance with the Law of Scotland

G1.4 In the event that mediation proceedings are commenced in terms of Clause G1.2 the procedure for mediation and consequential provisions relating to mediation are as follows:-

- (a) A neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the Parties or if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other then either Party may apply to a mediation provider to appoint a Mediator;
- (b) In the event of the Mediator agreed upon by the Parties being unable or unwilling to act either Party may apply to a mediation provider to appoint a Mediator
- (c) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from a mediation provider to provide guidance on a suitable procedure.
- (d) Unless otherwise agreed all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (e) If the Parties reach agreement on the resolution of the dispute the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (f) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- (g) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts

G1.5 Notwithstanding the terms of Clauses G1.2 or G1.3 either Party shall be entitled to seek an interim order restraining the other Party from doing any act or compelling the other Party to do any act from any court of competent jurisdiction.

G1.6 For the avoidance of doubt the Supplier shall remain responsible for the delivery of the Supplies and the Council shall remain responsible for

payment of the Price in terms of the Contract during any period of dispute in terms of this clause.

H STATUTORY OBLIGATIONS

H1. Governing Law

- H1.1 The Contract shall be construed and interpreted in accordance with Scots Law and any disputes, issues or claims arising out of or in connection with the Contract or its subject matter or formation shall be subject to the exclusive jurisdiction of the Scottish Courts.
- H1.2 The Supplier shall be responsible for obtaining and maintaining all licences, authorisations, consents or permits required in relation to the performance of its obligations under this Contract.
- H1.3 The Supplier shall comply with the Standards and all applicable law in performing its obligations under this Contract.
- H1.4 Nothing in this Contract will exclude the terms of the Sale of Goods Act 1979, the Sale and Supply of Goods Act 1994, the Supply of Goods (Implied Terms) Act 1973 and the Supply of Goods and Services Act 1982.

H2 Prevention of corruption

- H2.1 The Supplier shall not, and shall ensure that its Staff shall not, commit any of the prohibited acts listed in this Clause H2. For the purposes of this Clause H2 a prohibited act is committed when the Supplier or its Staff:-
- (a) directly or indirectly offers, promises or gives any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity; or
 - (iii) show or refrain from showing favour or disfavour to any person in relation to the Contract or any other contract
 - (b) directly or indirectly requests, agrees to receive or accepts any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
 - (c) commits any offence:-
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to the Contract or any other contract with the Council; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Council.
- H2.2 The Supplier warrants, represents and undertakes that it is not aware of any financial or other advantage being offered, promised or given to the Council or any other public body or any person working for or engaged by or on behalf of the Council or any other public body in connection with the Contract, or that an agreement has been reached to that effect, in connection with the execution of the Contract, excluding any arrangements of which full details have been disclosed in writing to the Council before execution of the Contract.

- H2.3 The Supplier shall immediately notify the Council in writing if it becomes aware of or suspects any Default of Clauses H2.1 or H2.2 or has reason to believe that it or any of its Staff have:-
- (a) been subject to an investigation or prosecution which relates to an alleged prohibited act ;
 - (b) been listed by any government department or agency as being debarred, suspended , proposed for suspension or debarment , or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a prohibited act; or
 - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a prohibited act in Clauses H2.1 .
- H2.4 If the Supplier notifies the Council that it suspects or knows that there may be a Default of Clauses H2.1 or H2.2 the Supplier must respond promptly to the Council's enquiries, co-operate with any investigation and allow the Council to audit books, records and any other relevant documentation.
- H2.5 If the Supplier, its Staff or anyone acting on the Supplier's behalf engages in conduct prohibited by Clause H2.1 the Council may terminate the Contract in terms of Clause E1 (Termination on the occurrence of a Termination Event).
- H2.6 Notwithstanding the provisions of Clause G1 (Dispute Resolution) any dispute relating to the interpretation of Clause H2 or the amount or value of any gift, consideration or commission shall be determined by the Council, acting reasonably having given due consideration to all relevant factors, and its decision shall be final and conclusive.
- H2.7 In determining whether the Contractor has committed a prohibited act as set out in Clause H2.1 the Council shall act in a reasonable and proportionate manner having regard to such matters as the gravity of the conduct prohibited by Clause H2.1 and the identity of the person performing that prohibited conduct.
- H3. Prevention of Fraud**
- H3.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice to prevent Fraud by its Staff and the Supplier (including its shareholders, members, directors) in connection with the receipt of monies from the Council.
- H3.2 The Supplier shall notify the Council immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- H3.3 If the Supplier, its Staff or its Sub-contractors commits Fraud in relation to this or any other contract with the Council, the Council may terminate the Contract in terms of Clause E1 (Termination on the occurrence of a Termination Event).
- H4 Blacklisting activities**
- H4.1 The Supplier shall comply with the provisions of:-
- (a) The Employment Relations 1999 Act (Blacklists) Regulations 2010

(b) Section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992 and/or

(c) The DPA

and shall not unlawfully process Personal Data in connection with any blacklisting activities in connection with the performance of their obligations under the Contract.

H4.2 In the event of the Supplier having breached Clause H4.1 the Council shall be entitled to terminate the Contract in terms of Clause E1 (Termination on the occurrence of a Termination Event).

H5. Health and safety

H5.1 The Supplier shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to its Staff and other persons in connection with the Supplier's performance of its obligations under the Contract.

H5.2 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

H5.3 While on the Council's premises the Supplier shall comply with any health and safety measures implemented by the Council in respect of the Council's staff and other persons working there.

H5.4 The Supplier shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.

H5.5 The Council shall 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 its obligations under the Contract.

H5.6 The Supplier shall notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Contract where that incident causes any personal injury or damage to property which could give rise to personal injury.

H5.7 Where the Supplies to be provided in terms of the Contract include the use of tools, plant and machinery the Supplier will, in terms of the Supply of Machinery (Safety) Regulations 2008 (as amended), use equipment which will reduce risks to as low a level as reasonably practicable, making use of the latest available technology.

H5.8 The Supplier shall ensure that any machinery used by them in connection with the delivery of the Supplies in terms of the Contract is safe for use in accordance with the requirements of Section 6 of the Health and Safety at Work etc Act 1974.

H5.9 The Council may inspect and examine the manner in which the Supplier delivers the Contract on the Premises as part of a health and safety assessment. The Supplier shall take account of all reasonable representations made by the Council following such inspection.

H6. Disclosure and Freedom of Information

- H6.1 The Supplier acknowledges that the Council is subject to the requirements of FOISA and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Supplier's expense) to enable the Council to comply with these Information disclosure requirements.
- H6.2 The Supplier shall (and shall procure that its' Sub contractor shall):
- (a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of FOISA.
- H6.3 The Council reserves the right to disclose Information contained within the Contract and any supporting correspondence, notes etc. held by them in compliance with a Request for Information (the decisions of the Council in relation to the interpretation of FOISA and the Environmental Information Regulations, including but not limited to whether
- an exemption or exception applies
 - if an exemption or exception applies, whether the public interest in giving out the information outweighs the public interest in holding back the information shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms).
- H6.4 In no event, shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Council.
- H6.5 Without prejudice to Clause H6.3 it may be necessary for the Council to disclose Information to its elected members concerning the contents of the Tenders in order to allow them to fulfil their role as a member of the Council.
- H6.6 In any of the above circumstances in Clauses H6.3 and H6.5 the Supplier shall not treat this disclosure of the information as a breach of this Contract.
- H6.7 The Supplier acknowledges that the Council may decide, acting in accordance with the Scottish Ministers' Code of Practice on the Discharge of Functions of Public Authorities under FOISA or the Environmental Information Regulations, to disclose Information
- (a) without consulting with the Supplier or
 - (b) following consultation with the Supplier and having taken its views into account.
- In the circumstances set out above the Council shall take reasonable steps where appropriate to give the Supplier advance notice or failing that to draw the disclosure to the Supplier's attention after any such disclosure.
- H6.8 The Supplier shall ensure that they retain all Information produced in the course of the Contract or relating to the Contract and shall permit the Council to inspect such records as requested from time to time.

H7 Equalities

- H7.1 The Supplier hereby confirms that it has, to the best of its knowledge and belief, complied with its statutory obligations under the Equality Act 2010 and all other relevant statutory obligations in relation to equalities which apply in the United Kingdom or their EU equivalent (“the Equalities Legislation”) and shall continue to comply with them in a manner which is proportionate and relevant to the nature of the Contract.
- H7.2 The Supplier shall take all reasonable steps to secure that its Staff or agents and all suppliers and any Sub-contractors employed in the delivery of the Contract comply with the Equalities Legislation.
- H7.3 The Supplier shall notify the Council in writing as soon as it becomes aware of any investigation of or proceedings brought against the Supplier under the Equalities Legislation.
- H7.4 The Supplier shall indemnify the Council with respect to all costs, charges and expenses (including legal and administrative expenses) incurred by the Council arising out of or in connection with any such investigation or proceedings brought against the Supplier under the Equalities Legislation.
- H7.5 The Council reserves the right to inspect the measures/steps taken by the Supplier to comply with the terms of Clauses H7.1 and H7.2 upon giving the Supplier reasonable notice of its intention to do so.

H8 Tax arrangements

- H8.1 Where the Supplier is liable to be taxed in the UK in respect of the consideration received under this Contract, the Supplier shall comply with the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”) and all other statutes and regulations relating to income tax in force throughout the Contract Period in respect of that consideration.
- H8.2 Where the Supplier is liable to National insurance Contributions (“NICs”) in respect of the consideration received under this Contract, the Supplier shall comply with the Social Security Contributions and Benefits Act 1992(SSCBA) and all other statutes and regulations relating to national insurance contributions in force throughout the Contract Period in respect of the consideration
- H8.3 The Council reserves the right, at any time throughout the Contract Period, to request the Supplier to provide them with information which demonstrates the Supplier’s compliance with Clauses H8.1 and H8.2 or provide reasons why those clauses do not apply to the Supplier.
- H8.4 The Supplier shall use all reasonable endeavours to obtain the consent of its staff to the provision of information to the Council in terms of clause H8.3.
- H8.5 In relation to the right reserved to the Council in terms of clause H8.3 the request will state the information required and the period within which the Supplier must provide that evidence.
- H8.6 The Supplier agrees to the Council supplying any information which it receives from the Contractor in terms of clause H8.3 to the Commissioners of Her Majesty’s Revenue and Customs (“HMRC”) for the purpose of the collection and management of revenue for which HMRC are responsible.

H9 Tax compliance

- H9.1 The Supplier represents and warrants that as at the Commencement Date it has notified the Council in writing of any occasions of tax non-compliance or any litigation that it is involved in that is in connection with any occasions of tax non-compliance.
- H9.2 If at any point during the Contract Period, an occasion of tax non-compliance occurs the Supplier shall:-
- (a) notify the Council in writing of such fact within 5 Working Days of its occurrence;
 - (b) promptly provide to the Council details of the steps taken/to be taken by the Supplier to address the occasion of tax non-compliance and to prevent the same from recurring together with any mitigating factors that it considers relevant; and
 - (c) provide such other information in relation to the occasion of tax non-compliance as the Council may require

H10 Registration

- H10.1 Where the Procurement Documents specified a requirement for Staff involved in the delivery of the Supplies or the Supplier to be registered with a particular Regulatory Body the Supplier will ensure that any Staff involved in the delivery of the Supplies are so registered and that their registration remains in place throughout the Contract Period.
- H10.2 The Supplier will ensure that any codes of practice issued by such Regulatory Body will be followed at all time by the Staff involved in the delivery of the Supplies.
- H10.3 In the event of the Supplier becoming aware that it or any of its Staff no longer have the appropriate registration referred to in Clause H10.1 they will notify the Council's Nominated Person immediately in writing and the Council shall be entitled to terminate the Contract in terms of Clause E8 (Termination due to cancellation of registration).

H11 TUPE

- H11.1 During the 12 months preceding the expiry of this Contract or after the Council has given notice to terminate this Contract or at any other time as directed by the Council and within 10 Working Days of the Council's request the Supplier shall fully and accurately disclose to the Council and shall ensure that any relevant Sub-contractors accurately disclose any and all Employee Liability Information in relation to all personnel engaged in delivering the Supplies (whether engaged by the Supplier or the Sub-contractor). This shall include all Relevant Employees who are to transfer as a consequence of a Relevant Transfer.
- H11.2 In the event of the Council exercising its right in terms of Clause H11.1 above the Supplier shall provide the relevant Employee Liability Information to the Council within 10 Working Days of receiving a request to do so from the Council.
- H11.3 Where the Supplier provides information in accordance with Clause H11.1 and the Supplier or Sub-contractor makes or becomes aware of any changes or discovers new information the Supplier shall notify the Council within seven days of any such change or discovery.

- H11.4 The Supplier warrants that all of the information provided to the Council pursuant to Clauses H11.1 and H11.3 shall to the best of their knowledge and belief be accurate and complete. The Supplier authorises the Council to use any and all of the information as it considers necessary for the purposes of its business or for informing any tenderer for any supplies which are substantially the same as the Supplies (or part thereof).
- H11.5 The Council and the Supplier agree that where the identity of a supplier (including the Incumbent Supplier) of any supplies which constitutes or which will constitute part of the Supplies is changed pursuant to this Contract (including upon termination of this Contract) then the change shall constitute a Relevant Transfer.
- H11.6 Following the Commencement Date, when any Relevant Transfer occurs as a result of an Assignment or Change of Control during the Contract Period the Supplier shall and shall, as far as reasonably practicable, ensure that any new Supplier of the relevant Supplies complies with all of its obligations under TUPE
- H11.7 In the event that the Supplier enters into any Sub-contract in connection with this Contract it shall impose obligations on its Sub-contractor in the same terms as those imposed on it in terms of this Clause H11 and shall ensure that each Sub-contractor complies with such terms. The Supplier shall indemnify the Council and keep the Council indemnified in full from and against all direct, indirect or consequential liability or loss awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of a Sub-contractor to comply with such terms.
- H11.8 The Supplier shall indemnify the Council and any Replacement Supplier and keep the Council and any Replacement Supplier indemnified in full from and against all direct, indirect or consequential liability or loss awarded against or incurred or paid by the Council or any Replacement Supplier as a result of or in connection with:-
- (a) the employment or termination of employment of any relevant employee or employees of any Sub-contractor during any period prior to and including the date of expiry or termination of this Contract; and
 - (b) any claim brought against the Council or any Replacement Supplier as a result of the Supplier's failure to comply with any of its obligations under the TUPE Regulations
- H11.9 This Clause H11 shall survive the expiry or termination of this Contract, howsoever occurring, and may be founded upon by the Council and the Contractor notwithstanding such expiry or termination

H12. Licences

- H12.1 Where the Procurement Documents specified a requirement for the Supplier involved in the delivery of the Supplies to hold a particular licence/licences the Supplier shall remain in possession of such licence/licences throughout the Contract Period.
- H12.2 The Council shall have the right to request sight of such licences at any time during the Contract Period upon giving the Supplier 2 Working Days' notice of such request.

- H12.3 In the event of the licence/licences requiring to be renewed during the Contract Period the Supplier shall ensure that such renewal is dealt with promptly and shall ensure that they or their Sub-contractor remain in possession of such licence/licences throughout the Contract Period.
- H12.4 The Supplier will notify the Council in writing of any conditions imposed on any licence required under Clause H12.1. Following such notification the Council, at its sole discretion, shall have the option to allow the Supplier to continue to provide the Supplies or to terminate the Contract in terms of Clause E8 (Termination due to failure to have or maintain a licence).
- H12.5 Failure by the Supplier or their Sub-contractor to obtain and keep a licence/licences in force throughout the Contract Period shall entitle the Council to terminate the Contract in terms of Clause E9 (Termination due to failure to have or maintain a licence).

X SUPPLIES

X1. Delivery

- X1.1 The Supplier shall deliver the Supplies during the Contract Period in accordance with the Council's requirements as set out in the Procurement Documents/Specification and the terms and conditions of the Contract in exchange for payment of the Price by the Council.
- X1.2 The Supplier shall ensure that the Supplies are dispatched to the address of the Premises specified in the relevant Purchase Order.
- X1.3 All Supplies dispatched to the Premises must be accompanied by a delivery note containing:-
(a) a description of the Supplies;
(b) the Council's official order number;
(c) the name of the individual within the Council who placed the order;
(d) the delivery address; and
(e) any other information deemed relevant and agreed between the Parties.
- X1.4 The Supplier must not deliver any Supplies to or for any department, officer or agent of the Council without first receiving a Purchase Order for such Supplies issued by an authorised officer of the Council.
- X1.5 Unless expressly agreed between the Parties, the Council shall not be obliged to accept delivery of the Supplies by instalments/in part. If however, the Council does specify or agree to delivery of the Supplies by instalments, the delivery of any instalment later than the Delivery Date shall, without prejudice to any other rights or remedies of the Council, entitle the Council to terminate the whole or any unfulfilled part of the Purchase Order without further liability to the Council.
- X1.6 Where the Supplies, having been placed in transit have not been received by the Council by the Delivery Date, the Council shall (provided that it has been advised in writing of the dispatch of the Supplies either:-
(a) within 10 Working Days of the Delivery Date, give notice to the Supplier that the Supplies have not been delivered and may request the Supplier to dispatch substitute Supplies free of charge within the timescales specified by the Council; or

- (b) terminate the Purchase Order, and treat this as a Default entitling the Council to terminate the Contract in terms of Clause E2 (Termination on Default) and may at its sole option itself deliver or procure a Replacement Supplier to deliver the Supplies specified in that Purchase Order.

X1.7 The Council will not be liable for the cost of any Supplies delivered as the case may be by the Supplier unless such Supplies are detailed in the Contract/Purchase Order.

X2 Volumes

X2.1 The Supplier acknowledges and has submitted its Tender on the understanding that no guarantee is given by the Council in respect of the level or the value of the Supplies referred to in the Procurement Documents which are indicative only.

X3. Ownership and risk

X3.1 Without prejudice to the Council's rights and remedies under Clause X6 (Inspection and rejection) title to the Supplies shall pass to the Council when the Supplies are delivered (or payment has been made, if earlier).

X3.2 The Supplier warrants that:-

- (a) it has a full, clear and unencumbered title to all the Supplies;
- (b) at the date the Supplies are delivered it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Supplies to the Council;
- (c) it shall transfer a valid and unencumbered title to the Supplies to the Council.

X3.3 Unless otherwise stated in the Purchase Order where the Supplies are delivered by the Supplier the point of delivery shall be when the Supplies are removed from the transporting vehicle at the Premises and a duly authorised representative of the Council signs the delivery note referred to in Clause X1.3.

X3.4 Where the Supplies are collected by the Council the point of delivery shall be when the Supplies are loaded onto the Council's vehicle and a duly authorised representative of the Council signs the delivery note referred to in Clause X1.3.

X3.5 Signature of a delivery note or courier receipt will act as proof of delivery only and shall not constitute any acknowledgement of the condition, quality or nature of the Supplies or the Council's acceptance of them. The Supplies will be inspected for compliance with the Procurement Documents/Specification upon opening. Any Supplies which do not comply with the Procurement Documents/Specification will be subject to rejection in terms of Clause X6 (Inspection and rejection).

X3.6 Where the Procurement Documents, Specification and/pr Purchase Order contains specific timescales for delivery of the Supplies or the Parties have agreed specific timescales for delivery of the Supplies time shall be of the essence of the Contract. In the event of all or part of the Supplies not being delivered by the Delivery Date the Council shall be entitled to treat this as a Material Breach and terminate the Contract in accordance with Clause E2 (Termination on Material Breach) or terminate /suspend the Contract in

accordance with Clause E10 (Partial termination, suspension and partial suspension).

- X3.7 Unless otherwise expressly agreed between the Parties the Council shall be under no obligation to accept Supplies delivered earlier than the Delivery Date.
- X3.8 Risk in the Supplies shall, without prejudice to any other rights or remedies of the Council (including the Council's rights and remedies under Clause X7 (Inspection and rejection)) pass to the Council at the point of delivery as set out in Clauses X3.3 and X3.4.
- X3.9 For the avoidance of doubt, Supplies once delivered are not recoverable by the Supplier in the event of termination of the Contract.

X4 Staff

X4.1 The Supplier shall:-

- (a) at all times allocate sufficient resources with the appropriate expertise to provide the Supplies in accordance with this Contract;
- (b) where requested to do so, provide the Council with a list of the names of all the Staff who may require admission to the Council's Premises, specifying the capacity in which they require admission and giving such other particulars as the Council may reasonably require;
- (c) ensure that all Staff involved in the delivery of the Supplies:-
 - (i) are appropriately qualified, trained and experienced and will deliver the Supplies with all reasonable skill, care and diligence;
 - (ii) act in accordance with Good Industry Practice and, where applicable the Standards;
 - (iii) comply with all reasonable requirements of the Council concerning conduct at the Council's premises; and
 - (iv) clearly display an identity card showing the name and address of the Supplier and bearing the name and photograph of the member of Staff or some form of identifying corporate wear while on the Council's Premises;
- (d) retain overall control of the Staff at all times so that the Staff shall not be deemed to be employees, agents or contractors of the Council;
- (e) be liable at all times for all acts or omissions of the Staff, so that any act or omission of a member of the Staff which results in a Default under this Contract shall be a Default by the Supplier;

X4.2 If any of the Staff are considered by the Council, in its sole discretion (acting reasonably), to be inadequately or inappropriately skilled or qualified to deliver the Supplies the Council will notify the Supplier accordingly. Those Staff or agents shall not be permitted to take part in the delivery of the Supplies and shall be replaced by other Staff or agents whose skills and qualifications are satisfactory to the Council.

X4.3 The Council may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Premises any member of the Supplier's Staff or any person employed or engaged by the Supplier, whose admission or continued presence would, in the reasonable opinion of the Council, be undesirable.

- X4.4 The decision of the Council as to whether any person is to be refused access to the Premises shall be final and conclusive.
- X4.5 Any obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Staff also do, or refrain from doing, such act or thing.
- X4.6 The Supplier shall immediately inform the Council of any actual or potential industrial action, whether such action is being taken/is to be taken by their Staff or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- X4.7 In the event of industrial action by its Staff, the Supplier shall seek Approval from the Council in respect of its proposals to continue to perform its obligations under the Contract.
- X4.8 If the Supplier's proposals referred to in Clause X4.7 above are considered insufficient or unacceptable by the Council acting reasonably, then the Council shall have the right to terminate the Contract with immediate effect by notice in writing.
- X4.9 If due to no fault of the Supplier the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of the normal business of the Council, the Supplier may request the Council's Approval for a reasonable allowance of time to fulfil their obligations under the Contract.

X5 Vehicles and equipment

- X5.1 When delivering Supplies to the Premises the Supplier's Staff must report to the Council's main office within the Premises and vehicles may then drive through the Premises only on the approval and direction of an authorised officer of the Council. The Supplier and any Sub-contractors shall at all times comply with the Council's reasonable security requirements.
- X5.2 Any commercial vehicles used for the dispatch of the Supplies to or the collection of the Supplies from the Premises must be fitted with audible reversing alarms. Vehicles must be clean, free from rodent or insect infestation and residue from previous loads. Staff in charge of these vehicles must wear suitable clean protective clothing. Any driver used by the Supplier in the delivery of the Supplies must take all necessary precautions to ensure the highest standards of care are maintained during loading, transportation and dispatch. The Supplier shall off-load the Supplies as directed by the Council and shall comply with all regulations, safety and security requirements in relation to the Premises.
- X5.3 In the event of the Procurement Documents or the Purchase Order requiring the Supplies to be delivered in a particular type of vehicle the Supplier will comply with such requirement when delivering the Supplies to the Premises.
- X5.4 The Supplier shall provide all the Equipment necessary for the provision of the delivery of the Supplies.
- X5.5 The Supplier shall not deliver any Equipment nor begin any work on the Premises without obtaining the Approval of the Council.

- X5.6 All Equipment brought onto the Premises in connection with the delivery of the Supplies shall be at the Supplier's own risk and the Council shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Council's Default.
- X5.7 The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- X5.8 The Supplier shall, at the Council's written request, at its own expense and as soon as reasonably practicable:-
- (a) remove from the Premises any Equipment which in the reasonable opinion of the Council is hazardous, noxious or not in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment
- X5.9 On completion of delivery of the Supplies the Supplier shall remove the Equipment together with any other materials used by the Supplier to deliver the Supplies and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained therein, other than fair wear and tear, which is caused by the Supplier or any Staff.

X6 Packaging

- X6.1 The Supplier shall ensure (at its own cost) that all Supplies are properly packaged and secured so that they are delivered in the condition described within the Procurement Documents/Specification and/or Purchase Order.
- X6.2 All Supplies shall be packaged where applicable in accordance with the Manual Handling Regulations to facilitate safe handling. Where appropriate any items delivered weighing more than 20kg should be packaged to facilitate mechanical offloading. Single items weighing more than 20kg will not be deemed to be delivered unless packaged accordingly.
- X6.3 Where mechanical offloading is required the Supplier shall be responsible for supplying any mechanical offloading, lifting, moving or other equipment required to offload Supplies weighing more than 20kg.
- X6.4 The Council may require the Supplier to remove from the Premises any materials brought into the Premises by the Supplier which in the reasonable opinion of the Council are either hazardous, noxious or not in accordance with the Contract and/or to remove packaging at the Supplier's expense as soon as reasonably practicable.
- X6.5 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier's delivery note states that such materials will be charged for unless returned. The Council accepts no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by the Council unless the Supplier shall within 10 Working Days of receiving notice from the Council that the packages have been dispatched notify the Council of such non-arrival.
- X6.6 Where the Council specifies that the Supplier must remove the packaging following delivery the Supplier shall remove such packaging within the

timescale specified by the Council or within 10 Working Days of delivery whichever is the earliest.

X7 Inspection and rejection

- X7.1 The Supplier shall permit the Council or the Council's authorised representatives to carry out any inspections or tests of the Supplies the Council reasonably requires at the Supplier's premises upon the Council giving the Supplier reasonable notice.
- X7.2 The Supplier shall permit the Council's authorised representatives to carry out any inspections, tests, periodic monitoring or spot checks of the Supplier's premises as the Council may reasonably require during the Contract Period.
- X7.3 Such inspection or testing shall take place during the Supplier's normal working hours and shall be undertaken at no cost to the Council.
- X7.4 Any failure on the part of the Council to make a complaint at the time of such inspection or test and any approval given by the Council during or after such tests or inspections shall not constitute a waiver by the Council of any rights or remedies in respect of the delivery of the Supplies. The outcome of any such inspections or tests may form part of the monitoring arrangements and performance appraisal referred to in Clause C8 (Monitoring of contract performance)
- X7.5 In the event of the Supplier dispatching Supplies:-
(a) without a delivery note containing the information stated in Clause X1.3; or
(b) in excess of those specified in the Purchase Order the Council shall have the option to reject the Supplies.
- X7.6 The Supplier accepts that if Supplies so dispatched are rejected by the Council:-
(a) no charges will be accepted by the Council for the transportation of the Supplies to and from the Premises to the Supplier's premises as a result of this omission, and
(b) the Council shall have no liability to pay for the rejected Supplies.
- X7.7 Without prejudice to any other right or remedy which the Council may have, if any Supplies delivered are not in accordance with the Procurement Documents, Specification and/ or the Purchase Order, or the Supplier fails to comply with any of the terms of the Contract, then the Council may, at their sole option, (whether or not any part of the Supplies have been delivered) do any one or more of the following, by notice in writing to the Supplier within 10 Working Days of delivery having taken place;-
(a) reject the Supplies (in whole or in part) and require the Supplier to remove the Supplies (in whole or in part) promptly (and in any event within 5 Working Days) at the risk and cost of the Supplier. In the event of the Council having already paid for such Supplies the Supplier will provide the Council with a full refund for the Supplies so rejected within 15 Working Days of the date of the written notice;
(b) give the Supplier the opportunity at the Supplier's expense to either remedy the failure together with any damage resulting from such failure (where such failure is capable of remedy) or to deliver replacement Supplies and carry out any other necessary work to

ensure that the terms of the Contract are fulfilled, in accordance with the Council's instructions promptly, and in any event within 5 Working Days. For the avoidance of doubt in this case delivery shall not be deemed to have taken place until such remedy or replacement has occurred;

- (c) refuse to accept any further Supplies but without any liability to the Council;
- (d) carry out at the Supplier's expense any work necessary to make the Supplies comply with the Procurement Documents, Specification and/or the Purchase Order;
- (e) without terminating the Contract, itself deliver or procure the delivery of all or part of the Supplies from a Replacement Supplier until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Council that the Supplier will once more be able to deliver all or such part of the Supplies in accordance with the Contract;
- (f) terminate the Contract in respect of part of the Supplies only (whereupon a corresponding reduction in/adjustment to the Price shall be made) and thereafter itself deliver or procure a Replacement Supplier to deliver such part of the Supplies; and/or
- (g) charge the Supplier for and the Supplier shall on demand pay any costs reasonably and properly incurred by the Council.

X7.8 In the event of the Supplier failing to comply with Clause X7 above this will be deemed to be a Default, and the Council shall be entitled to terminate the Contract in terms of Clause E3 (Termination on Default).

X7.9 For the avoidance of doubt the Council will be deemed to have accepted the Supplies if it expressly states the same in writing or fails to reject the Supplies in accordance with this Clause X7.

X7.10 Any Supplies rejected or returned by the Council shall be returned to the Supplier at the Supplier's own risk and expense.

X8 Uplift

X8.1 If the Procurement Documents indicate that the Council reserves the right to uplift the Supplies from the Supplier's premises the following conditions shall apply:-

- (a) the Council will telephone the Supplier following issue of the Purchase Order to advise the Supplier that they intend to uplift the Supplies from the Supplier's premises ;
- (b) the Supplier will ensure that the Supplies are made available for uplift in compliance with any turnaround times specified in the Procurement Documents/Tender;
- (c) in the event that the Council requires to uplift the Supplies from the Supplier's premises outwith the Supplier's normal working hours then uplift will take place in accordance with the procedures agreed between the Parties;
- (d) once the Supplies specified in the Purchase Order are loaded onto the Council's vehicle(s), the driver will sign the delivery note, on behalf of the Council, at which point the Supplies shall be considered to be delivered. Signature will act as proof of delivery only and shall not constitute any acknowledgement of the condition, quality or nature of the Supplies, or the Council's acceptance of them and the provisions of Clause X7 (Inspection and rejection) shall apply;

- (e) Any driver used by the Council in the uplift of the Supplies will take all necessary precautions to ensure the highest standards of care are maintained during uplift, loading and transportation of the Supplies. The Council's employees shall uplift the Supplies as directed by the Supplier and shall comply with the Supplier's regulations, safety and security requirements in relation to the Supplier's premises; and
- (f) All Council employees involved in the uplift will clearly display an identity card showing the name of the Council and bearing the name and photograph of the Council employee. Council employees will report to the Supplier's main office and vehicles may then drive through the Supplier's premises only on the approval and direction of an authorised person.

X9 Storage

X9.1 If, for any reason, the Council is unable to take delivery of the Supplies on or after the Delivery Date, the Supplier shall, if requested to do so by the Council:-

- (a) store or arrange for the storage of the Supplies clearly marked with the name of the Council for a period of 10 Working Days (or such other period as shall be mutually agreed between the Parties) and shall safeguard the Supplies and take all reasonable steps to prevent their deterioration until their delivery, provided the Council notifies the Supplier to this effect at least 2 Working Days prior to the Delivery Date and/or
- (b) enter into an off-site materials agreement/vesting agreement in terms satisfactory to the Council.

X9.2 Any costs involved in storing the Supplies shall be agreed between the Parties prior to the storage period commencing.

X10 Discontinued items

X10.1 In the event that any particular item or model of the Supplies is discontinued by the manufacturer or becomes obsolete during the Contract Period either:-

- (a) the Supplier may make a request in writing to the Council to specify an alternative item or model. Such written request shall contain a statement confirming that the manufacturer has discontinued the item or model together with such other supporting information as may reasonably be required by the Council; or
- (b) the Council may require that any discontinued item or model be replaced by the Supplier in accordance with the Council's alternative specification.

X10.2 Any alternative item or model delivered by the Supplier to the Council must be of a standard equivalent to or better than the discontinued Supplies and be compatible with the original Specification. The alternative Supplies shall be delivered at either the same Price as the discontinued Supplies or at a reduced Price, unless otherwise agreed between the Parties.

X11 Additional, new and innovative products

X11.1 During the Contract Period the Supplier shall identify and provide details to the Council of any additional, new or innovative products that could be provided under the Contract.

X11.2 The provisions of Clause C5 (Change Control Process) shall apply in the event of any modification to the Contract being required in respect of any such additional, new or innovative products.

X12 Intellectual Property Rights

X12.1 Except as otherwise provided within the Contract neither the Council or the Supplier shall acquire any right, title or interest in the other's pre-existing Intellectual Property Rights.

X12.2 Where required in connection with the use of the Supplies the Supplier shall grant to the Council a non-exclusive, revocable, royalty free licence to use the Supplier's Intellectual Property Rights for the Contract Period.

X12.3 Where a licence has been granted to the Council in terms of Clause X12.2 the Council shall have the right to sub-licence the rights granted to it by the Supplier to a third party provided that :-

- (a) the sub-licence is on terms no broader than those granted to the Council;
- (b) the sub-licence authorises the third party to use the rights licensed only for purposes related to the Supplies or for any purpose relating to the exercise of the Council's business or function; and
- (c) if requested to do so, the third party will execute a confidentiality undertaking in favour of the Contractor.

X12.4 The Supplier shall not infringe any Intellectual Property Rights of any third party in providing the Supplies. The Supplier shall, during and after the Contract Period, indemnify the Council and keep them indemnified in full against all costs, expenses, damages and losses (whether direct or indirect) including any interest, penalties and reasonably and properly incurred legal and other professional fees awarded against or incurred or paid by the Council as a result of or in connection with any claim made against the Council for actual or alleged infringement of a third party's intellectual property arising out of or in connection with the delivery or use of the Supplies to the extent that the claim is attributable to the acts or omissions of the Supplier or its Staff.

X12.5 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights is made in connection with the Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Council and , at its own expense, and subject to the Council's Approval use its best endeavours to :-

- (a) modify any or all of the Supplies without reducing the performance or functionality or substitute alternative Supplies of equivalent performance or functionality so as to avoid the infringement or the alleged infringement provided that the provisions herein shall apply with any necessary changes to such modified Supplies or to the substitute Supplies; or
- (b) procure a licence to use the Supplies which are the subject of the alleged infringement on terms and conditions which are acceptable to the Council

and in the event that the Supplier is unable to comply with the provisions of this Clause X12.5 (a) or (b) within twenty (20) Working Days of receipt of the Supplier's notification the Council may terminate the Contract by issuing a Termination Notice to the Supplier with immediate effect.

- X12.6 At any time during the Contract Period or following termination or expiry of the Contract the Supplier may terminate the licence granted to the Council under Clause X12.2 by giving 30 calendar days' notice in writing (or such other period as agreed between the Parties) if the Council or any person to whom the Council grants a sub-licence breaches the terms of this Clause X12 or ,if the breach is capable of remedy, does not remedy the breach within 20 Working Days after the Supplier gives the Council written notice specifying the breach and requiring its remedy.
- X12.7 In the event of the licence being terminated in terms of Clause X12.6 the Council shall:-
- (a) immediately cease use of any software the licence relates to:
 - (b) at the discretion of the Supplier return or destroy documents and other tangible materials. If the Supplier hasn't made an election within 6 months of the termination of the licence the Council may destroy the documents and other tangible materials; and
 - (c) ensure ,so far as reasonably practicable that any software and/or background IPR that are held in electronic, digital or other machine readable form ceases to be readily accessible from any computer or other device
- X13. Ethical requirements**
- X13.1 The Supplier shall perform its obligations under the Contract in such a way as to promote appropriate standards regarding legal, ethical and social issues including, for example, health and safety, security of employment rights, equality, corruption and fair trade in particular in developing countries.
- X13.2 The Supplier shall take appropriate steps to ensure that there is no slavery or human trafficking in its supply chain and shall ensure that any Sub-contractor delivering the Supplies on its behalf takes similar steps.
- X14. Community benefits**
- X14.1 In the event of the Supplier having specified in their Tender that they will provide Community Benefits as part of the Contract the Supplier shall use their best endeavours to ensure that the Community Benefits are provided throughout the Contract Period.
- X14.2 The Council shall monitor the provision of the Community Benefits by the Supplier in terms of Clause C8 (Monitoring of Contract Performance).
- X15. Environmental requirements**
- X15.1 In delivering the Supplies the Supplier shall comply at all time with any environmental requirements detailed in the Procurement Documents or advised by the Council at any time during the Contract Period.
- X15.2 The Supplier shall satisfy themselves that no Supplies delivered under the Contract will:-
- (a) endanger the health of any person;
 - (b) cause significant damage to the environment during manufacture, use or disposal;
 - (c) consume a disproportionate amount of energy during manufacture, use or disposal;
 - (d) cause unnecessary waste because of over packaging or because of an unusually short shelf life; or

- (e) contain materials derived from threatened species or threatened environments.

- X15.3 The Supplier shall when delivering the Supplies:-
- (a) consider and wherever possible address sustainability and accessing issues when delivering the Supplies; and
 - (b) have regard to any sustainability, accessibility and corporate social responsibility standards and targets advised to it by the Council when delivering the Supplies; and
 - (c) give due regard to environmental considerations in meeting their obligations under the Contract throughout the Contract Period, including the use of materials that are or can be recycled and materials that are proven to be environmentally safe.

X16. Fair working practices

- X16.1 The Supplier shall perform its obligations under the Contract in such a way as to comply, so far as required by Law, with fair working practices.

- X16.2 In the event of the Supplier having specified in their Tender that they will operate fair working practices as part of the Contract the Supplier shall ensure that the fair working practices remain in operation throughout the Contract Period.

- X16.3 The Council shall monitor the operation of the fair working practices by the Supplier in terms of Clause C8 (Monitoring of Contract Performance).

- X16.4 In the event of the Supplier failing to operate the fair working practices referred to in Clause X16.2 the Council and the Supplier shall agree a period within which the Supplier will correct this failure.

- X16.5 In the event of the Supplier continuing to fail to operate the fair working practices at the end of the period agreed between the Parties in terms of Clause X16.4 the Council reserves the right to terminate the Contract by issuing a Termination Notice to the Supplier with immediate effect.

X16A. Fair work first

- X16A.1 The Supplier shall perform its obligations under the Contract in such a way as to comply, so far as required by Law, with the commitment to progressing towards adoption of fair work first criteria.

- X16A.2 In the event of the Supplier having specified in their Tender that they will commit to progressing towards adoption of the fair work first criteria as part of the Contract, the Supplier shall ensure that they take such actions as specified in their Tender to ensure compliance with their commitment to progressing towards the adoption of the fair work first criteria throughout the Contract Period.

- X6A.3 The Council shall monitor the progress made by the Supplier in progressing towards the adoption of the fair work first criteria in terms of Clause C9 (Monitoring of Contract Performance).

- X16A.4 In the event of the Supplier failing to provide evidence to support their commitment to progressing towards the adoption of the fair work first criteria referred to in Clause X16A.2 the Council and the Supplier shall agree a period within which the Contractor will correct this failure.

X16A.5 In the event of the Supplier continuing to fail to provide evidence to support their commitment to progressing towards the adoption of the fair work first criteria referred to in Clause X16A.2 at the end of the period agreed between the Parties in terms of Clause X16A.4 the Council reserves the right to terminate the Contract by issuing a Termination Notice to the Supplier.

X17 Standards

X17.1 The Supplier shall at all times comply with the Standards, the Specification and, where applicable, shall maintain accreditation with the relevant Standards' authorisation body. To the extent that the Standards have not been specified in the Procurement Documents and/or this Contract, the Supplier shall agree the relevant Standards with the Council prior to the delivery of the Supplies and in any event, the Supplier shall perform its obligations under the Contract in accordance with the Law.

X17.2 The Supplier shall ensure that the Supplies are free from defects in design and workmanship and are fit for the purpose that such Supplies are ordinarily used for and for any particular purpose made known to the Supplier by the Council.

X17.3 The Supplier shall conform to Good Industry Practice when performing its obligations under the Contract and shall not at any time do or fail to do anything which may bring the standing or reputation of the Council into disrepute or attract adverse publicity and shall have due regard to this when performing its obligations under the Contract.

X17.4 The Supplier shall comply with the Council's internal policies and procedures in force from time to time as notified to the Supplier in writing by the Council

X18 Third party rights

X18.1 A person who is not a Party to this Contract has no right under the Contracts (Third Party Rights) (Scotland) Act 2017 to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

X18.2 No third party may enforce, or take any step to enforce, any third party provision without the Approval of the Council, which may, if given, be given on and subject to such terms as the Council may determine.

X18.3 Any amendments to or modifications of this Contract may be made by the Parties without the consent of any third party.

X19. Entire agreement

X19.1 This Contract constitutes the entire agreement between the Council and the Supplier in respect of the matters dealt with herein. The Contract supercedes all previous agreements and prior discussions, representations and undertakings made by one Party to the other, whether oral or written, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

- X19.2 In the event of, and only to the extent of, any conflict between the Clauses of the Contract, any document referred to in those Clauses and the Schedule, the conflict shall be resolved in accordance with the following order of precedence:-
- (a) the Clauses of the Contract;
 - (b) the Schedule; and
 - (c) any other document referred to in the Clauses of the Contract.

This is the Schedule referred to in the foregoing Standard Terms and Conditions of Contract

Part 1 – Definitions and Interpretation

For the purposes of the Contract:-

- “Approval”** means the prior written consent of the Council which shall not be unreasonably withheld or delayed
- “Assignee”** means any body to whom a Party to the Contract assigns, novates or otherwise disposes of or creates a trust in favour of any of its rights, obligations or liabilities under the Contract
- “Assignment”** means an agreement between the Supplier and a third party to assign, novate or otherwise dispose of or create a trust to and in favour of that third party of any of its rights, obligations or liabilities under the Contract
- “Best Value”** means the statutory duty on a local authority to secure best value as specified in Part 1 of the Local Government in Scotland Act 2003 and includes the effect of or implications of any judicial interpretation thereof, regulations made thereunder and any guidance issued by the Scottish Ministers in terms thereof
- “Change Control Notice”** means the notice referred to in Clause C5
- “Change of Control”** means the acquisition whether by purchase, transfer, renunciation or otherwise by a third party purchaser of any interest in shares in the capital of the Supplier if, upon completion of that acquisition, the third party purchaser, together with persons acting with or connected with him, would hold more than fifty percent (50%) of the voting rights attached to the issued shares in the capital of the Supplier.
- “Clause”** means a clause of the Contract
- “Commencement Date”** means the date advised to the Supplier by the Council (in the Letter of Award or in any other communication between the Parties) as the commencement date notwithstanding any date or dates of signature of the Contract by the Council and the Supplier
- “Community Benefits”** means the economic and social benefit for residents and businesses arising as a result of the award of the Contract and the performance of the Contract
- “Contract”** means this written agreement between the Council and the Supplier consisting of these clauses, the Schedule (and any document referred to in any part of the Schedule), any written modification of the Clauses or the Schedule, the ITT, the Tender and the Letter of Award.
- “Contract**

Period”	means the period from the Commencement Date to:- (a) the Expiry Date; or (b) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract; or (c) following an extension the date of expiry of the Extended Period
“Contract Year”	means a twelve month term during the Contract Period.
“Council”	means South Lanarkshire Council established in terms of the Local Government etc (Scotland) Act 1994 and having their principal offices at Council Offices, Almada Street, Hamilton, ML3 0AA
“Default”	means any breach of the obligations of the relevant Party or any other default, act, omission, negligence or negligent statement of the relevant Party or its staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.
“Delivery Date”	means the date and time specified in the Purchase Order, or otherwise agreed between the Parties, as being the time when the Supplies are to be delivered.
“DPA”	means the Data Protection Act 2018 and any legislation primary or secondary implementing or supplementing it together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation and any legislation primary or secondary amending it
“Employee Liability Information”	means the information a Supplier is required to provide in the event of a relevant transfer under TUPE
“Environmental Information Regulations”	means the Environmental Information (Scotland) Regulations 2004 and any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such legislation
“Equipment”	means the Supplier’s equipment, plant , materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Council) in the performance of its obligations under the Contract.
“Expiry Date”	means the date advised to the Supplier by the Council (in the Letter of Award or in any other communication between the Parties) as the expiry date
“Extended Period”	means the period of extension offered by the Council in terms of Clause A1.2 and accepted by the Supplier

“FOISA”	means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such legislation.
“Force Majeure”	<p>means any event, occurrence, circumstance, matter or cause affecting the performance by either the Council or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"> a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the affected Party which prevent or materially delay the affected Party from performing its obligations under this Contract; b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; c) acts of the Crown, local government or regulatory bodies; d) fire, flood or any disaster; and e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding: <ul style="list-style-type: none"> i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and iii) any failure of delay caused by a lack of funds;
“Force Majeure Notice”	means a written notice issued in terms of Clause E11
“Formal Warning Notice”	means a written notice issued by the Council to the Contractor in terms of Clause E3 (Termination on Default)
“Fraud”	means any offence under Law or common law creating offences in respect of fraudulent acts, fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.
“General Change In Law”	means a change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to comparable supplies
“Good Industry Practice”	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or

	body engaged in a similar type of undertaking under the same or similar circumstances.
“Guarantee”	means the Guarantee in the form contained in the Procurement Documents granted by the Guarantor in favour of the Council
“Guarantor”	means the body which has agreed to guarantee the due performance of the Contract by the Supplier in accordance with Clause D4
“Incumbent Supplier”	means any supplier delivering any supplies that constitutes or that will constitute part of the Supplies immediately before the Transfer Date
“Information”	for the purposes of Clause H6 of the Contract has the meaning given under section 73 of the FOISA.
“Intellectual Property Rights (IPR)”	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database, rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
“Law”	means any applicable Act of Parliament, subordinate legislation, exercise of the royal prerogative, enforceable European Community right, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply
“Letter of Award”	means the letter issued by the Council to the successful Supplier accepting their Tender in relation to the Contract.
“Material Breach”	includes but is not limited to the situations set out in Clause E2.2 In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding
“Month”	means calendar month
“Nominated Person”	means the person appointed by each of the Parties to liaise with each other in relation to all matters connected with the performance of their obligations under the Contract or any person appointed to look after the Supplier’s affairs
“Party”	means a party to the Contract (and includes “Parties”)
“Persistent	

Breach”	means a Default which has occurred on 3 or more separate occasions within a continuous period of 3 Months
“Personal Data”	shall have the meaning assigned to it by where applicable the GDPR or the DPA
“Premises”	means the location where the Supplier delivers the Supplies in terms of the Contract
“Price”	means the sum specified in the Letter of Award/Purchase Order payable by the Council to the Supplier in exchange for the full and proper performance by the Supplier of its obligations under the Contract subject to any modification thereof agreed between the Parties
“Price Book”	means a document or on-line provision produced and updated by the Supplier in consultation with and agreed by the Council that provides the Council with prices for the Supplies
“Procurement Documents”	means any document produced or referred to by the Council to describe or determine elements of the procurement including the contract notice, the Specification and any additional documents issued by the Council in connection with the procurement of the Supplies
“Property”	means the property (other than heritable property) issued or made available to the Contractor by the Council in connection with the Contract
“Purchase Order”	means the purchase order for Supplies issued by the Council to the Supplier
“Regulatory Bodies”	means those government departments and regulatory, statutory and other entities, committees, ombudsman and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in the Contract or any other affairs of the Council and “Regulatory Body” shall be construed accordingly
“Relevant Transfer”	shall have the meaning assigned to it by TUPE
“Replacement Supplier”	means any third party supplier appointed by the Council to deliver any Supplies which are substantially similar to any of the Supplies and which the Council receives in substitution for any of the Supplies following the termination or partial termination of the Contract.
“Request for Information”	means for the purposes of clause H6 of the Contract any apparent request for information under FOISA or the Environmental Information Regulations
“Schedule”	means the Schedule in 4 parts annexed as relative to and forming part of the Contract

“SME”	means the micro, small and medium-sized enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding 50 million euro and/or an annual balance sheet total not exceeding 43 million euro
“Specification ”	means the detailed description of the Supplies to be delivered under the Contract all as more particularly described in the Procurement Documents, set out in Pat 2 of the Schedule and/or as agreed between the Parties
Specific Change In Law”	means a change in Law that relates specifically to the business of the Council and which would not affect comparable supplies
“Staff”	means all persons employed or appointed by the Supplier to perform its obligations under the Contract together with the Supplier’s agents, suppliers and any Sub-contractors used in the performance of its obligations under the Contract
Standards”	means unless otherwise specified in the Procurement Documents the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with and any other applicable quality standards, Government codes of practice and guidance.
“Sub-contract”	means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide the Supplies or any part thereof to the Supplier
“Sub-contractor”	means any third party with whom the Supplier or its agents enters into a Sub-contract
“Supplies”	means the supplies to be delivered by the Supplier in terms of the Contract as set out in the Procurement Documents, the Schedule or the Purchase Order
“Supplier”	means the party identified in the Letter of Award with whom the Council enters into the Contract
“Tender”	means the document(s) submitted by the Supplier to the Council in response to the Procurement Documents.
“Termination Event”	means any one or more of the following:- conspiracy; corruption; bribery; Fraud; fraudulent evasion; common law offence of uttering;

common law offence of attempting to pervert the course of justice;
an offence under section 41 or Schedule 2 of the Counter Terrorism Act 2008;
money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 2002
an offence in connection with the proceeds of criminal conduct within the meaning of sections 93A, 93B or 93C of the Criminal Justice Act, 1988
an offence under Part 1 or the Schedule of the Human Trafficking and Exploitation (Scotland) Act 2015;
an offence in connection with the proceeds of drug trafficking within the meaning of sections 49, 50 or 51 of the Drug Trafficking Act 1994;
any other offence within the meaning of Article 57(1) of Directive 2014/24/EU
breach of the obligation on the Supplier relating to the payment of taxes or social security contributions;
an offence under the Employment Relations Act 1999 (Blacklists) Regulations 2010
a Material Breach in terms of Clause E2

“Termination Notice”

means a notice issued by one of the Parties to the other Party terminating the Contract

“TUPE”

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended

“UK GDPR”

has the meaning assigned to it by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019

“VAT”

means value added tax in accordance with the provisions of the Value Added Tax Act 1994

“Working Day”

means any day excluding Saturday and Sunday and statutory holidays as fixed by the Council.

Interpretation

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

- (a) References to any statute, law, order, regulation or other similar instrument shall be construed as a reference to the statute, law, order, regulation or instrument as subsequently amended or re-enacted
- (b) References to the singular include the plural and vice versa and references to male include female unless the context otherwise requires;
- (c) Clause headings and sub headings are for reference purposes only and shall not affect the construction of anything in the Contract. Reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
- (d) Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees and
- (e) The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”

The provisions of the Interpretation Act 1978 with respect to interpretation and construction shall apply mutatis mutandis

Part 2 Specification

The Supplier will deliver the Supplies to the Council throughout the Contract Period in accordance with the Procurement Documents and as set out below:-

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Part 3 Price

1. The Supplier shall submit all invoices in accordance with the Council's e-invoicing process at the intervals agreed between the Parties. Invoices will be submitted to the email address advised to the Supplier by the Council, will be in searchable pdf format and will contain the following information:-
 - (a) invoice number;
 - (b) invoice/credit note identifiers;
 - (c) Council Purchase Order number;
 - (d) invoice period;
 - (e) Contractor's name and address
 - (f) Contractor's VAT registration number, if applicable;
 - (g) delivery details;
 - (h) description of the Supplies provided which must match the description on the Council's Purchase Order;
 - (i) product number for each invoiced line, if applicable;
 - (j) invoice line item information (net at line level);
 - (k) invoice line item information (net total of invoice);
 - (l) invoice total (gross); and
 - (m) VAT breakdown, if applicable
2. The Council will check the accuracy of any invoice received and shall raise any queries with the Supplier promptly upon receipt of the invoice, failing which the invoice will be deemed to be accurate. The Supplier will respond promptly to any queries raised by the Council.
3. The Council shall, in addition to the Price and following receipt of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Supplies provided in accordance with the Contract.
4. Unless otherwise stated in the Contract payment shall be made within 30 calendar days of receipt and agreement of invoices. Payment shall be made by BACS transfer into a suitable bank account or by other electronic payment methods as appropriate unless otherwise agreed between the Parties.
5. The Supplier shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Council at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this paragraph 5 shall be paid by the Supplier to the Council not less than 5 Working Days before the date upon which the tax or other liability is payable by the Council.
6. Where the Council disputes an invoice or any part thereof, the Parties shall

follow the process outlined below to verify whether disputed sums are due in terms of this Contract:

- (a) The Supplier will issue a fresh invoice for the undisputed elements to the Council for payment in terms of paragraph 1;
 - (b) The Supplier will issue a fresh invoice in respect of the disputed elements;
 - (c) The Council will raise any queries in respect of the invoice issued in terms of paragraph 6(b) with the Supplier within fifteen (15) Working Days of receipt;
 - (d) The Supplier will respond to queries raised by the Council within ten (10) Working Days of their receipt.
 - (e) If the Council is satisfied with the response given by the Supplier the Council will proceed to pay the invoice within thirty (30) calendar days of receipt of the response under paragraph 6(d).
 - (f) If the Council is not satisfied with the response given by the Supplier, the matter will be referred for determination by the Nominated Person within five (5) Working Days of receipt of the response under paragraph 6(d)
 - (g) The Nominated Persons for both Parties will use their reasonable endeavours to reach an amicable and workable solution on the issues in dispute, within ten (10) Working Days of the matter being referred to them, failing which the matter will be referred to dispute resolution in terms of Clause G1 (Dispute Resolution) within five (5) Working Days, and the timescales set out in Clause G1 (Dispute Resolution) will apply.
 - (h) Where the Nominated Persons agree a resolution this will be final and binding on the Parties.
 - (i) The Parties will comply with the determination issued by the Nominated Persons; or where the matter has been referred to dispute resolution in terms of Clause G1 (Dispute Resolution) the Parties will comply with the determination issued in terms of that process as follows:-
 - (i) Where the determination requires the Council to pay all of the disputed sums, the Council shall pay these sums within thirty (30) calendar days of the date of the determination.
 - (ii) Where the determination requires the Council to pay only part of the disputed sums, the Contractor shall raise a credit note in favour of the Council for the sums found not due to the Contractor within ten (10) Working Days of the determination, and the Council will pay the balance due on the invoice on receipt of the credit note.
7. The Supplier shall not suspend the provision of the Supplies unless the Supplier is entitled to terminate the Contract under Clause E3 (Termination on failure to pay).
 8. Interest shall be payable by the Council on the late payment of any undisputed sums of money properly claimed in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended.
 9. Without prejudice to paragraph 5 for the avoidance of doubt it shall at all times remain the sole responsibility of the Supplier to:-
 - (a) assess the VAT rates and tax liability arising out of or in connection with the Contract: and
 - (b) account for or pay any VAT (or any other tax liability) relating to payments made to the Supplier under the Contract to HMRC.
 10. The Council shall not be liable to the Supplier in any way whatsoever for any error or failure made by the Supplier (or the Council) in relation to VAT

11. Where the Supplier enters into a Sub-contract with a Sub-contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such Sub-contract which:-
 - (a) requires payment to be made of all sums due by the Supplier to the Sub-contractor within a specified period not exceeding 30 calendar days from the receipt of a valid invoice and
 - (b) provides that, for the purpose of payment alone, where the Council has made payment to the Supplier and the Subcontractor's invoice includes Supplies in relation to which payment has been made by the Council then, to the extent that it relates to such Supplies, the Sub-contractor's invoice shall be treated as valid and payment shall be made by the Supplier to the Subcontractor without deduction.

12. The Council is an end user for the purposes of S55A of the VAT Act 1994 reverse charge for building and construction services.

Part 4 Performance Monitoring

1. The Supplier shall comply with the performance monitoring requirements set out in the Procurement Documents and as set out below:-

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2. In addition the Supplier will provide annual reports to the Council throughout the Contract Period and upon the expiry/termination of the Contract on:-
 - (i) overall SME spend and
 - (ii) South Lanarkshire based SME spend under the Contract.

If you need this information in a different format or language, please contact us to discuss how we can best meet your needs. Phone: 0303 123 1015 Email: equalities@southlanarkshire.gov.uk