



## **Scotland Excel**

# **General Conditions of Contract for Supply November 2024**

**IMPORTANT NOTE: The Tender process and all related contract conditions are subject to the Law and Guidance applicable in Scotland relative to the award of public contracts as currently in force.**

## Contents

A. Preliminaries.....	5
1.    Definitions and Interpretation .....	5
2.    Headings.....	5
3.    Special Conditions .....	5
4.    Contracting Authority .....	5
5.    Capacity and Eligibility to Contract .....	5
6.    Failure to comply with requirements in “Information and Instructions to Tenderers” .....	6
B. Duration and Procedures of Contract.....	6
7.    Constitution and Duration of Contract.....	6
8.    Standard Terms of Supply .....	7
9.    Orders and Mini Competitions for Goods.....	7
10.   Unauthorised Supply or Provision of Goods.....	9
C. Contract Operation .....	9
11.   Obligation to Conform.....	9
12.   Compliance with Law, Good Industry Practice and Standards.....	10
13.   Pricing and payment .....	10
14.   BACS (Banks Automated Clearing Service).....	11
15.   Fluctuating Offers.....	11
16.   Market Testing.....	11
17.   Variation of the Goods offered under the Contract.....	12
18.   Performance and Management of Service .....	14
19.   Management Information.....	15
20.   Community Benefit Requirement information .....	16
21.   Key Performance Indicators .....	16
22.   Account Management.....	17
23.   Variations .....	18
24.   Mistakes in Information .....	19
25.   Complaints and Escalation Procedure.....	19
26.   Change in Status of Contractor (Assignment, Subcontracting, Change of Control) .....	20
27.   Access for Inspection of the Contractor’s Premises.....	22

28.	Disruption.....	22
29.	Audit.....	22
30.	Scotland Excel Logo .....	22
31.	Advertising & Marketing Information .....	23
D	Remedies.....	23
32.	Recovery of Sums Due .....	23
33.	Suspension .....	23
34.	Termination of Contract .....	25
35.	Insolvency .....	29
36.	Remedies Cumulative.....	29
37.	Dispute Resolution .....	29
E.	General Legal Conditions and Governing Law .....	29
38.	Liability, Indemnity and Insurance .....	29
39	Health and Safety .....	32
40	Ethical Requirements .....	32
41	Protection of Vulnerable Groups (Scotland) Act 2007 .....	32
42	Equalities.....	33
43	Human Rights Act 1998.....	35
44	Data Protection and Information Security .....	35
45	Confidentiality.....	36
46	Public access to information .....	37
47	Indemnity regarding Data Protection and Confidentiality .....	37
48	Disclosure of information.....	37
49	Company Profile.....	37
50	Intellectual Property Rights.....	37
51	Change of Legislation .....	38
52	Prevention of Corruption .....	39
53	Prevention of Fraud.....	40
54	Force majeure .....	40
55	Waiver .....	41
56	Severability of Conditions .....	41
57	TUPE.....	41
58	Serving of Notices .....	41

59	The Contract (Third Party Rights) (Scotland) Act 2017 .....	43
60	Law of Scotland and Scottish Courts .....	43
	SCHEDULE: Definitions and Interpretation .....	44
	A. Definitions .....	44
	B. Interpretation .....	49
	APPENDIX: Standard Terms of Supply.....	50

## **A. Preliminaries**

### **1. Definitions and Interpretation**

1.1. The definitions and expressions in the Schedule to these General Conditions of Contract of Supply shall apply to the Information and Instructions to Tenderers, the General Conditions of Contract, the Special Conditions of Contract, the Standard Terms of Supply and any Purchase Order made under the Contract.

1.2. The definitions and expressions in the Schedule shall have the meaning given to them there with respect to the interpretation of the Contract except where the context otherwise requires.

### **2. Headings**

Headings to Conditions are for convenience and shall not affect their interpretation.

### **3. Special Conditions**

3.1. The Special Conditions forming part of the Tender Documents shall apply to the Framework and any Call-off to the extent set out therein.

3.2. Unless otherwise stated, in the event of any conflict between any Special Conditions of Contract and the other terms of the Contract, the terms of the Special Conditions of Contract shall prevail.

### **4. Contracting Authority**

4.1 For the purposes of this Contract, the contracting authority shall be Renfrewshire Council entering into contracts at the direction of the joint committee formed under Section 57 of the Local Government (Scotland) Act 1973 operating under the name of Scotland Excel in terms of Regulation 38 of Public Contracts (Scotland) Regulations 2015.

4.2 For the purposes of any Call-offs entered into under this Contract, the contracting authority shall be the Council (as defined in the Schedule to these General Conditions).

### **5. Capacity and Eligibility to Contract**

5.1. The Contractor confirms to the best of its knowledge that there are no restrictions of any kind which in any way affects its capacity to contract. If any such restrictions exist or arise, Scotland Excel shall have the option to terminate the Contract. The Contractor shall indemnify Scotland Excel in full for any resulting loss.

5.1.1 Without prejudice to the generality of Condition 5.1, if the Contractor is dissolved or otherwise ceases to exist during the period of this Contract, its participation in the Contract will end through frustration and its contract shall terminate automatically in accordance with Condition 34.2A (Termination without Notice: Frustration).

5.2. Without prejudice to the immediately preceding Condition, the Contractor confirms that, to the best of its knowledge:

5.2.1. it has not been convicted of any of the offences detailed in Regulation 58(1);

5.2.2. none of the grounds detailed in Regulations 58(3) or 58(8) apply to it;

5.2.3. it has not committed any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or Sections 137 and 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 or the Data Protection Act 2018 by unlawfully processing personal data in connection with any blacklisting activities, ; and

5.2.4. it meets the published selection criteria for admission to the framework.

as at the date of submission of its Tender Documents, and the Contractor undertakes to notify Scotland Excel immediately if, at any time during the term of the Contract, any circumstances arise which affect the representations given by the Contractor in this Condition 5.2

5.3. In the event of any breach of this Condition 5 howsoever occurring, including but not limited to by virtue of such conviction, such occurrence, such committing or failure to notify, Scotland Excel shall have the option to terminate the Contract and the Contractor shall indemnify Scotland Excel in full for any resulting loss.

## **6. Failure to comply with requirements in “Information and Instructions to Tenderers”**

Where Scotland Excel ascertains to its satisfaction that the Contractor as a Tenderer has failed to comply with one or more requirements contained within the “Information and Instructions to Tenderers”, Scotland Excel shall be entitled at any time at its discretion to direct Renfrewshire Council to terminate the Contract all in terms of Condition 34.8 (Material Breach – Immediate Termination) below.

## **B. Duration and Procedures of Contract**

### **7. Constitution and Duration of Contract**

The Contract shall be constituted by an acceptance in writing by Renfrewshire Council at the direction of Scotland Excel of the Tender Documents and shall be for the period set down in the acceptance and the Tender Documents.

## **8. Standard Terms of Supply**

8.1. Any Purchase Order and any Competitive Order placed under this Contract pursuant to Condition 9 shall be subject to the Standard Terms of Supply set out at Appendix 1.

## **9. Orders and Mini Competitions for Goods**

9.1. Where a Council requires to purchase Goods through this Contract it may:

9.1.1. award its requirements in accordance with the terms laid down in the Contract without reopening competition; such an award shall be made on the Standard Terms of Supply set out at Appendix 1; or

9.1.2. where not all the terms for the proposed order are laid down in the Contract (including, for example and without prejudice to the foregoing generality, the circumstances set down in that part of the Information and Instructions to Tenderers relating to guidance on the use of the framework arrangement of which the Contract forms part), the Council may award its Competitive Order requirements following a Mini Competition Process conducted to comply with the requirements of the Public Contracts (Scotland) Regulations 2015; or

9.1.3. award its requirements partly by the method described in Condition 9.1.1 above and partly by the method described in Condition 9.1.2 above.

9.2. Where a Competitive Order is required under either Conditions 9.1.2 or 9.1.3, a Council, at its sole discretion, may instruct the carrying out of a Mini Competition Process in accordance with the provisions of Condition 9.3.

9.3. Prior to providing any Contractor with a Competitive Order under the Contract the Council shall:

9.3.1. where the Contract has been awarded in lots, identify the relevant lot that the Competitive Order requirement falls into;

9.3.2. identify the Contractors capable of providing the Competitive Order requirement within the relevant lot (hereinafter in this Condition referred to as "eligible Contractors");

9.3.3. as required, supplement and refine the Conditions and vary the relevant award criteria set out in the Tender Documents, but only to the extent permitted by and to comply with the requirements of the Public Contracts (Scotland) Regulations 2015;

9.3.4. invite eligible Contractors within the relevant lot identified under

Condition 9.3.2 above to participate in a Mini Competition Process for its Competitive Order requirement in accordance with the Public Contracts (Scotland) Regulations 2015 and in particular:

- 9.3.4.1. make available to those eligible Contractors, in accordance with Condition 9.3.4.2 below, an invitation which sets out the specific requirements for the Competitive Order and the Mini Competition Award Criteria;
  - 9.3.4.2. consult in writing with each eligible Contractor and invite it to submit a tender in writing for each specific contract lot to be awarded within a specified time limit;
  - 9.3.4.3. set a time limit for the receipt of tenders which takes into account factors such as the complexity of the subject matter and the time needed to submit tenders; and
  - 9.3.4.4. require each eligible Contractor to either submit a proposal in writing, in accordance with the Council's requirements or decline the invitation to take part in the Mini Competition Process;
- 9.3.5. apply the Mini Competition Award Criteria to determine which of the tenders submitted by the eligible Contractors through the Mini Competition Process is most economically advantageous and use this as the basis of its decision to award its requirements;
- 9.3.6. where the Council decides to make an award following a Mini Competition Process, place a Competitive Order with the successful Contractor which:
- 9.3.6.1. states the requirements;
  - 9.3.6.2. identifies the contract lot or lots;
  - 9.3.6.3. states the Price payable in accordance with the Mini Competition Process submitted by the successful Contractor;
  - 9.3.6.4. incorporates the Conditions applicable to the Competitive Order as supplemented and refined as required; and
  - 9.3.6.5. contains the Standard Terms of Supply set out in Appendix 1; and

9.3.7. advise the unsuccessful eligible Contractors in writing as soon as reasonably practicable of its decision on the award of the Competitive Order.

9.4. The Contractor agrees that all tenders submitted in relation to any Mini Competition Process pursuant to this Condition shall remain open for acceptance for ninety (90) days (or such longer period specified in the invitation to tender issued by the Council).

9.5. Notwithstanding the fact that the Council has followed the procedure set out above in Condition 9.3, the Council shall be entitled at all times to decline to make an award.

9.6. The Prices offered by the Contractor for Competitive Orders shall be either lower than or equivalent to the Price for the Goods under the Contract. In no event shall the Council accept a Price from a Contractor in excess of the said Price. Where, due to the specification of the required goods not being included in the Contract, it is not possible to offer Prices on this basis, the Contractor will provide the Council with a fair and reasonable offer in accordance with the requirements of the Mini-Competition Process held pursuant to this Condition.

9.7. No Purchase Order shall be made after the expiry date of the Contract, to ensure that the relevant terms and conditions of the Contract are validly applied to such Purchase Order.

9.8. Any award or Competitive Order for purchase of Goods through this Contract may continue between the Contractor and the Council notwithstanding the expiry or termination of this Contract, subject to the Law applying to the terms of such award or Competitive Order.

## **10. Unauthorised Supply or Provision of Goods**

Contractors shall neither supply nor provide any Goods without first receiving a Purchase Order for such Goods from an authorised officer of a Council. Neither Scotland Excel nor a Council shall be liable for the cost of any Goods delivered, supplied or provided if the Goods are not covered by the prior issue of a Purchase Order.

## **C. Contract Operation**

### **11. Obligation to Conform**

It shall be an essential condition of the Contract that the Contractor binds and obliges itself to adhere fully to the Conditions throughout the term of the Contract including performing the Contract in accordance with the Law (which includes environmental, social and employment law for the avoidance of doubt), Good Industry Practice and Standards and to provide the Goods in accordance with any Purchase Order,

complying in full with the Standard Terms of Supply, the Specification and the Conditions as they may be supplemented and refined for the purposes of such a Purchase Order to the satisfaction of any party placing such a Purchase Order under the Contract.

## **12. Compliance with Law, Good Industry Practice and Standards**

12.1. Throughout the duration of the Contract the Contractor shall be bound and obliged to continue to comply with the published requirements for admission to the Contract and to comply with the Law, Good Industry Practice and the Standards relevant to the Goods. During the period of the Contract the Contractor shall produce such evidence as Scotland Excel on behalf of the Councils may reasonably require to satisfy Scotland Excel that the Contractor has complied with this Condition.

12.2 [Not used]

## **13. Pricing and payment**

13.1. Unless otherwise provided or stated, all Prices shall be stated in pounds sterling and will be regarded as firm Prices for the duration of the Contract period and be strictly nett Prices, exclusive of Value Added Tax. Prices will be deemed to include an allowance for all matters in respect of safety, health and welfare and the conditions of employment of employees and all matters relating to the satisfactory execution of the Contract including (but not limited to) holding the insurances required under Condition 38 hereof.

13.2. Any decrease in Price must be notified to Scotland Excel and applied immediately.

13.3. The agreed credit period will be 30 days. Payment of valid, undisputed invoices will be made by the appropriate Director of Finance or equivalent officer in the relevant Council within 30 days of the date of the invoice issued on or after delivery or provision of the Goods conforming to the Conditions of the Contract.

13.4. Where the Contractor enters into a sub-contract for the purpose of performing the Contract, the Contractor shall cause a term to be included in such sub-contract:

13.4.1. which requires payment to be made to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Council has made payment to the Contractor and the sub-contractor's invoice includes Goods in relation to which the payment has been made by the Council then, to the extent that it relates to such Goods, the invoice shall be treated as valid and , provided the Contractor is not exercising a right of retention or set-off in respect of a breach of contract by

the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Contractor, payment shall be made to the sub-contractor without deduction;

13.4.2. which notifies the sub-contractor that the contract forms part of a larger contract for the benefit of the Council and that should the sub-contractor have any difficulty in securing the timely payment of an invoice that matter may be referred by the subcontractor to the Council; and

13.4.3. for any subcontract for the purposes of performing the Contract, a provision is included in the same terms as that set out in this Condition 13 (including for the avoidance of doubt this Condition 13.4.3) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and subcontractor as the case may be.

#### **14. BACS (Banks Automated Clearing Service)**

The Contractor shall be obliged to accept payment by means of BACS (Banks Automated Clearing Service).

#### **15. Fluctuating Offers**

If a fluctuating offer is accepted, Scotland Excel will be given not less than Sixty (60) days clear written notice of any proposed increase in the Contract Prices. No increase in Prices will be made without the written agreement of Scotland Excel. Applications for Price increases must comply with any counter-inflation legislation and be accompanied by supporting documentary evidence from an independent source to the satisfaction of Scotland Excel. Scotland Excel reserves the right to advise the Councils not to purchase Goods under the Contract where Scotland Excel considers proposed increases in Prices for such Goods to be unreasonable.

#### **16. Market Testing**

16.1. At any time throughout the period of the Contract, Scotland Excel on behalf of the Councils may test the current market for the Goods to establish whether the Prices for the Goods remain competitive. Testing of the market may include seeking quotations for the supply of the Goods from other suppliers which are not participants on the current framework.

16.2. If a more competitive pricing is obtained, the Contractor shall be afforded the opportunity to improve the pricing offered by it under the Contract in order to match or better the pricing from the alternative source.

16.3. Scotland Excel shall not be obliged to disclose to the Contractor the identity of any supplier which has provided pricing as part of its testing of the market.

## **17. Variation of the Goods offered under the Contract**

### **Core Product Review**

17.1. The award of the Contract is based upon the list of products specified by Scotland Excel within the Tender Documents and priced by the Contractor as part of his tender submission (hereinafter referred to as “the Core List”). During the period of the Contract the buying patterns of the Councils may change to respond to changing needs and other circumstances. To identify such changes in buying patterns the Contractor must supply to Scotland Excel on demand and, in any event, not less than quarterly, a report identifying the following:

17.1.1. items on the Core List purchases of which are not meeting the Contractor’s expectations as to the levels of Purchase Orders for these items in terms of either volume or value or both (“Candidate items for removal from the Core List”); and

17.1.2. items not on the Core List for which purchases are meeting high levels either by volume or value or both such as would have prompted inclusion in the Core List at the time of tendering for the Contract (“Candidate items for inclusion on the Core List”).

17.2. Scotland Excel on behalf of the Councils shall conduct a review of the Core List as and when required but not less than annually during the period of the Contract.

17.3. For Candidate items for removal from, or inclusion on, the Core List, the parties shall negotiate the terms, including the Prices payable, upon which the Contract is to be varied to reflect the change in status of each item in question.

### **Discontinued Goods**

17.4. Where Goods have been, are or are to be permanently discontinued, the Contractor will use reasonable endeavours to offer an alternative compatible with the original specification from the manufacturer but the Contractor cannot guarantee that a suitable alternative will be available.

17.5. Alternative Goods are to be based on the manufacturer’s own pricing and may not necessarily be the same Price as the discontinued Goods.

17.6. The Contractor will notify Scotland Excel, in writing and within a reasonable timescale, of the details of any proposed alternative Goods where existing Goods have been, are or are to be discontinued. The Contractor, when notifying Scotland Excel of the change shall provide a written summary of its opinion of the ways in which the proposed replacement Goods meet the

requirements met by the original Goods and the aspects in which it exceeds or fails those requirements.

17.7. The reasonable timescale for the purposes of Condition 17.6 shall be one month from the date on which the Contractor becomes aware that the Goods have been, are or are to be discontinued.

17.8. Acceptance of any proposed replacement Goods on to the Contractor's product and pricing schedule will be at the sole discretion of Scotland Excel.

17.9. Where:

17.9.1. the Contractor advises that the proposed alternative Goods can only be supplied at an increased Price; or

17.9.2. the number and nature of the items notified as discontinued Goods is such as, in the reasonable opinion of Scotland Excel, to constitute a significant change to the Contract, the proposal may be dealt with in accordance with the procedure for changes to Contract requirements set down in Condition 23, or Scotland Excel may recommend to the Councils that the proposed alternative Goods are not to be bought under the Contract, or may terminate the Contract in whole or in part.

### **Substitution of Goods**

17.10. The Contractor must supply the Goods as detailed in the schedule of offer unless this is amended by written agreement by the parties.

17.11. If the Contractor is unable to supply the Goods in accordance with the Contract, the Contractor must inform the Council immediately on receipt of the Purchase Order, giving sound reason for its inability to do so.

17.12. Any alternative Goods offered must be acceptable to Scotland Excel and the Councils and must be of a quality at least meeting the level of quality and charged at the Price agreed in the Contract for the Goods being substituted.

17.13. If the Contractor cannot provide a suitable alternative to the Goods no longer available, without prejudice to any other remedies available, the Council shall have the right to purchase the Goods from an alternative source.

17.14. If the cost of so purchasing the Goods exceeds the amount which would have been payable to the Contractor the excess cost shall be recoverable from the Contractor by the Council which has incurred it. For the avoidance of doubt where the nature of the Goods requires its supply at short notice or as an emergency the excess cost in full has to be paid by the Contractor.

## **Additional, new, innovative and significantly improved Goods**

- 17.15. It is recognised that during the period of the Contract, Scotland Excel and/or a Contractor may identify additional, new, innovative or significantly improved items falling within the types of Goods covered by the Contract, which could, therefore, be supplied as Goods under this Contract on the Core List. In such circumstances, the procedures set out in this and the following Conditions shall apply. No such items may be supplied under this Contract unless and until written consent is given by Scotland Excel.
- 17.16. For items described under Condition 17.15 the procedure shall be as follows:–
- 17.16.1. if such items are identified by the Contractor, the Contractor shall notify Scotland Excel in writing of the items with a full specification. No Prices or reference to Prices are to be included within this notification;
  - 17.16.2. if such items are identified by Scotland Excel, Scotland Excel may either request that a Contractor provide to it the information set out in Condition 17.16.1 or obtain this information itself from an alternative reliable source;
  - 17.16.3. no matter the manner of identification, Scotland Excel shall decide, at its sole discretion, whether, in principle, each such item could be included within the Goods to be supplied under the Contract on the Core List;
  - 17.16.4. if Scotland Excel decides that such an item is not to be included within the Goods to be supplied under the Contract, it shall notify all Contractors in writing and Scotland Excel's decision shall be final, and
  - 17.16.5. if Scotland Excel decides that an item should be included within the Goods to be supplied under the Contract on the Core List, Scotland Excel shall invite bids for the supply of the item from all Contractors who are eligible under the Contract to supply such an item. The award criteria and weightings in assessing the bids shall be the same as those which applied in the award of the Contract. Scotland Excel shall conduct the tender process and all eligible Contractors which were invited to submit bids will be notified in writing of the outcome.
- 17.17. For the avoidance of doubt any item whether added to the Core List or otherwise supplied under the Contract shall be subject to the Conditions in full.

## **18. Performance and Management of Service**

- 18.1. The Contractor shall perform its obligations under the Contract and any

Call-off:

- 18.1.1. in accordance with the terms of the Contract and each Purchase Order;
  - 18.1.2. with appropriately experienced, qualified and trained personnel and with all due skill, care and diligence;
  - 18.1.3. in accordance with the Law, Good Industry Practice and Standards;
  - 18.1.4. in complete and continuous compliance with the obligations relating to insurance; and
  - 18.1.5. where applicable, with materials conforming to all terms of the Contract.
- 18.2. The Contractor shall properly manage and monitor performance of the Contract and shall inform Scotland Excel immediately if any aspect of the Contract is not, or is not capable of being, performed.
- 18.3. The Contractor shall provide all the necessary facilities, materials and equipment to perform the Contract.

## **19. Management Information**

- 19.1. Scotland Excel shall require, and a Council may require within a Call-off, management information relating to the Contract on a quarterly basis from the commencement date of the Contract.
- 19.2. The Contractor must provide the management information to Scotland Excel in the template that will be provided to the Contractor at the mobilisation stage of the Contract. This template may contain a selection of types of management information including, but which may not be limited to: Contract information; Contractor information including relative to its supply chain; Council information; item / Goods information; Call-off information; and Contractor performance information.
- 19.3. The Contractor must provide to Scotland Excel the information requirements stated Conditions 19.1 and 19.2 on a quarterly basis in accordance with the following schedule (or such other schedule specified in the Special Conditions of Contract or otherwise agreed between the Parties):
- 19.3.1. 1 January to 31 March Information, must be provided no later than 15 April;
  - 19.3.2. 1 April to 30 June Information, must be provided no later than 15 July;

19.3.3. 1 July to 30 September Information, must be provided no later than 15 October; and

19.3.4. 1 October to 31 December Information, must be provided no later than 15 January.

19.4. Data supplied by the Contractor under this Condition must cover all spend by all parties entitled to use the Contract.

19.5. As set out in their Call-offs, the Councils may require all or any of the abovementioned types of management information, or any other management information, to be provided to them by the Contractor at any time interval required.

## **20. Community Benefit Requirement information**

20.1. Scotland Excel shall require, and a Council may require within a Call-off, information relating to any:

20.1.1. Community Benefit Requirements; and

20.1.2. community benefits, similar to Community Benefit Requirements, but which are being provided voluntarily under the Contract by the Contractor.

20.2. The Contractor must provide this Community Benefit Requirement information to Scotland Excel in the template, that will be provided to the Contractor at the mobilisation stage of the Contract, and in accordance with the following schedule:

20.2.1. 1 April to 30 September Information, must be provided no later than 31 October; and

20.2.2. 1 October to 31 March Information, must be provided no later than 30 April.

## **21. Key Performance Indicators**

21.1. To ensure that the Contract provides the agreed benefits and value to the Councils, it will be managed and monitored by Scotland Excel and the Contractor according to the four key performance indicator areas of cost, quality, service and sustainability.

21.2. To monitor a Contractor's performance on cost, the key performance indicators that may be used may include, but are not limited to, any indicator covering: pricing stability; supply and supply chain; conformance to the agreed pricing terms; invoice accuracy; and any innovative solutions to cost reductions.

- 21.3. To monitor a Contractor's performance on quality, the key performance indicators that may be used may include, but are not limited to, any indicator covering: fitness for purpose of the Goods specified and listed in each lot; returns; and substitutions
- 21.4. To monitor a Contractor's performance on service, the performance indicators that may be used may include, but are not limited to, any indicator covering: successful delivery of products to the required lead time, with specific reference to on-time delivery and delivery accuracy; effective and responsive account management; complaints; general communications; and the provision of accurate and on time management information.
- 21.5. To monitor a Contractor's performance on sustainability, the performance indicators that may be used may include, but are not limited to, any indicator covering: corporate and social responsibility including climate; waste minimization; continual improvement; and innovation in products.
- 21.6. The key performance indicators and minimum performance levels will be set by Scotland Excel, following discussion with the Contractor, at contract implementation stage and thereafter monitored by the parties to the Contract during the period of the Contract. To enable effective management of the Contract, accurate and on time management information shall be required in accordance with Conditions 19 and 20.

## **22. Account Management**

- 22.1. The Contractor must proactively and positively manage the relationship with Scotland Excel and the Councils, providing support and ideas to enable the Councils to gain maximum value from the supply of the Goods under the Contract.
- 22.2. It is a requirement of the Contract that a robust account management structure, providing knowledgeable and trained staff acquainted with the subject matter of the Contract, is put in place before the commencement date of the Contract to ensure the efficient and effective supply of the Goods. Detailed information identifying any account manager and designated staff to manage the account relating to the Contract, including name, address, position, contact telephone numbers and email address must be passed to Scotland Excel within seven (7) days of appointment.
- 22.3 Any account manager appointed to manage the Contract must:
- 22.3.1 Have previous experience of dealing with accounts of the scale of the Contract and accounts for the Goods;
- 22.3.2 Be responsible for the day to day supervision of the account, making sure that there are sufficient resources from the Contractor to provide a supply of the Goods and any associated service to meet the Conditions;

22.3.3 Visit Scotland Excel and its Councils regularly by prior arrangement to give advice and assistance in identifying suitable products and solutions to meet individual Council requirements and to resolve any issues which may arise as a result of the supply of defective goods; and

22.3.4 Attend meetings with Scotland Excel as and when required, but on a frequency of no less than quarterly, to discuss the Contractor's performance in fulfilling its obligations, including developing the use by the Councils of the Contract.

22.4 Throughout the period of the Contract, Scotland Excel and the Councils shall review, at no less than six monthly intervals, the need for additional account managers and meetings to ensure the proper performance of the Contractor's obligations. The Contractor shall be obliged to comply with the reasonable demands of Scotland Excel and the Councils regarding the holding of meetings and appointment of an additional account manager or managers.

22.5 [Not used].

## **23. Variations**

### **Variation of the Contract Conditions**

23.1. Unless otherwise provided, the Conditions may only be varied with the prior written agreement of Scotland Excel and the Contractor.

23.2. No terms or conditions put forward at any time by the Tenderer or the Contractor shall form any part of the Contract unless specifically agreed in writing by Scotland Excel.

23.3. No change shall be made to the Conditions of Contract if the change does not comply with the requirements of the Regulations, in particular, Regulation 72.

### **Variation of Contract – Changes to Contract Requirements**

23.4. Each party (the "proposing party") shall be entitled to propose any variation to the Contract for consideration in relation to the Contract requirements. Any such variations could include, but shall not be restricted to, additions, alterations, substitutions or omissions to the Goods or changes regarding the delivery or provision of the Goods.

23.5. The proposing party shall notify the other party in writing of its proposal. If the proposing party is Scotland Excel, the Contractor shall confirm in writing within two (2) weeks of receipt of the proposal the effect the variation shall

have on the Contract including any effect on the Price or Prices payable for the Goods.

23.6. To consider any proposed variation, both parties shall have available to them:

23.6.1. the reason for the proposed change;

23.6.2. full details of the proposed change;

23.6.3. the Price, if any, of the proposed change; and

23.6.4. details of the likely impact, if any, of the proposed change on other aspects of this Contract.

23.7. The other party shall respond to the proposed change in writing and, if appropriate, representatives of both parties shall meet to discuss the proposed change.

23.8. Any change proposed by either party shall constitute an amendment to this Contract only once it has been accepted in writing by both parties. Until such time, the proposed change shall be neither binding nor implemented. Any work undertaken by the Contractor, its staff or agents in connection with any proposed change to this Contract shall be undertaken entirely at the expense and liability of the Contractor.

23.9. No consent shall be given under these Conditions 23.4 to 23.8 if the change is proposed by the Contractor and does not comply with the requirements of the Regulations, in particular, Regulation 72.

## **24. Mistakes in Information**

The Contractor shall be responsible for the accuracy of all documentation and information supplied to Scotland Excel by the Contractor in connection with the Goods and shall be liable for and pay Scotland Excel any extra costs occasioned by any discrepancies, errors or omissions therein.

## **25. Complaints and Escalation Procedure**

25.1. The Contractor must ensure that it has a procedure for the handling of Council complaints. The procedure must include the following provisions –

25.1.1. prompt recording of the complaint;

25.1.2. acknowledgement of the receipt of the complaint together with written advice as to how the complaint is to be dealt with no later than two Working Days after the receipt of the complaint;

25.1.3. a process to escalate responding to the complaint to senior levels of management within the Contractor where the Council acting

reasonably takes the view that the complaint is not being properly dealt with; the escalation process shall provide that regular contact with the Council is to be maintained by the Contractor until the issue giving rise to the complaint is resolved to the Council's reasonable satisfaction; and

25.1.4. arrangements for resolution of complaints that may affect the overall operation of the Contract.

**26. Change in Status of Contractor (Assignment, Subcontracting, Change of Control)**

26.1. No part of the Contract will be subcontracted or assigned by the Contractor without the prior written consent of Scotland Excel. Any breach hereof shall entitle Scotland Excel to determine the whole Contract or that part to which the breach relates or take any other remedies available. The agreement by Scotland Excel to any assignment or subcontracting of the Contract whether in whole or in part shall not relieve the Contractor of the Contractor's liabilities under the Contract.

26.2. Notwithstanding the terms of Condition 26.1 above of this Contract, the Contractor may assign to another person (a "factoring assignee") (i) the right to receive payment of all sums or any part thereof due to the Contractor under this Contract subject to deduction of sums in respect of which the Council exercises its right of recovery under Condition 32 of the Contract and (ii) all the related rights of the Contractor under this Contract in relation to the recovery of sums due but unpaid. The Contractor shall notify or procure that any factoring assignee notifies the Council of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Council to redirect payments or invoices accordingly. In the absence of such notification the Council shall be under no obligation to vary its arrangements for payment of the Price or for the handling of invoices.

26.3. Where a change in the Control of a Contractor occurs, Scotland Excel shall be entitled to consider whether the Contractor remains suitable and eligible to perform the obligations under the Contract and whether its consent to the change in Control may be given so that Scotland Excel and the Contractor remain compliant with the Law. Scotland Excel shall not withhold or delay its consent unreasonably subject to:

26.3.1. the Contractor's compliance with Condition 26.4;

26.3.2. Scotland Excel's compliance with its procedural requirements permitting assignment; and

26.3.3. compliance by all parties to the change in Control with the Law.

26.4. If any Contractor wishes to subcontract, assign or otherwise dispose of the benefit or the burden of the Contract or any part thereof or to agree to a

change in Control, the Contractor shall intimate to Scotland Excel no later than 60 days before the change in status is to take effect the name of the proposed party or parties involved and the nature of the change and thereafter shall provide all information that Scotland Excel may need to consider the Contractor's request.

26.5. The Contractor shall promptly notify Scotland Excel in writing of:

26.5.1. any material detrimental change in the financial standing or credit rating or both of the Contractor;

26.5.2. any material detrimental change in the Contractor's compliance with the published selection criteria for admission to the Contract; and/or

26.5.3. any circumstances suggesting that a change in the Control of the Contractor is planned or in contemplation, provided such notification does not contravene the Law.

26.6. Where the Contractor is subject to Part 28 of the Companies Act 2006 and this restricts the ability of the Contractor to comply with the requirements of this Condition, the relevant provisions in this Condition will not apply subject to the Contractor's compliance with the following requirements:

26.6.1. the Contractor must notify Scotland Excel promptly of the position in writing and provide such further information as may be reasonably required by Scotland Excel;

26.6.2. in disclosing information in accordance with this Condition, the Contractor must adhere to the requirements of all applicable legislation, including without limitation, the Companies Act 2006 and the City Code on Takeovers and Mergers ("The City Code"); and

26.6.3. copies of any disclosures made in accordance with the requirements of the aforementioned Part 28 of the Companies Act 2006, the Takeover Code and all applicable law and guidance must be provided to Scotland Excel at the time of issue.

26.7. Where the Contractor has failed to comply with the requirements of this Condition 26 or Scotland Excel has decided that it cannot give its consent to the proposed assignation or subcontracting or the continuation of the Contract following the change in Control, Scotland Excel shall be entitled, acting reasonably, to terminate the Contract under Condition 34.

26.8. No consent shall be given under this Condition 26 if the change proposed by the Contractor does not comply with the requirements of the Regulations, in particular, Regulation 72.

## **27. Access for Inspection of the Contractor's Premises**

27.1. Following award of the Contract, the Contractor shall permit representatives of Scotland Excel and any Council, following the giving of reasonable notice, except in cases of urgency, to have access to any of its premises to inspect such premises to ensure that they are fit for the purposes of the Contract, that they comply with the Conditions, the Law, Good Industry Practice and the Standards and to permit the representatives to carry out external quality audits and vendor assessments.

27.2. Separately, the Contractor is obliged throughout the duration of the Contract to make available on request to Scotland Excel and any Council all available documentation to substantiate its compliance with the Conditions, the Law, Good Industry Practice and the Standards or any other requirements of the Contract relating to quality assurance and assessment of the Contractor's performance of its obligations under the Contract.

## **28. Disruption**

28.1. The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of Scotland Excel and/or the Council, their employees or any other contractor employed by Scotland Excel and/or the Council.

28.2. The Contractor shall immediately inform Scotland Excel of any actual or potential industrial action, whether such action is by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

28.3. In the event of industrial action by its staff, the Contractor shall seek approval to its proposals to continue to perform its obligations under the Contract.

28.4. If the Contractor's proposals are considered insufficient or unacceptable by Scotland Excel acting reasonably, then the Contract may be suspended with immediate effect by Scotland Excel by notice.

## **29. Audit**

The Contractor shall keep and maintain until the date falling seven (7) years after the date of expiry of the Contract or any period of extension, or as long a period as may be agreed between the parties, full and accurate records of the Contract including the Goods supplied under it and all payments made by Scotland Excel and/or the Council. The Contractor shall on request afford Scotland Excel or Scotland Excel's representatives such access to those records as may be requested by Scotland Excel in connection with the Contract.

## **30. Scotland Excel Logo**

The Contractor must not use the Scotland Excel logo used by the joint committee operating under the name of Scotland Excel or disclose any details of any relationship

with Scotland Excel to any other party without the prior written consent of Scotland Excel.

### **31. Advertising & Marketing Information**

The Contractor consents to the receipt of marketing and advertising material by electronic transmission from Scotland Excel and/or its approved agents.

## **D Remedies**

### **32. Recovery of Sums Due**

If under the Contract any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum due to the Contractor under the Contract or any other contract with any Council.

### **33. Suspension**

33.1. Scotland Excel may suspend the Contractor's participation in the Contract where:

33.1.1. in the reasonable opinion of Scotland Excel, a breach or material breach by the Contractor creates an immediate or serious diminution of quality in the performance of the Contractor's obligations to below the requirements set out in the Tender Documents;

33.1.2. in the reasonable opinion of Scotland Excel, the Contractor has failed to timeously implement any remedial action plan agreed with Scotland Excel;

33.1.3. a Contractor has failed to provide notice of assignation, disposal, sub-contracting, change of Control or that it no longer meets the published selection criteria for admission to the Contract;

33.1.4. a Contractor has provided notice of assignation, disposal, subcontracting, change of Control or that it no longer meets the published selection criteria for admission to the Contract, and Scotland Excel has serious concerns about the viability of the arrangement;

33.1.5. the Contractor or Scotland Excel has given notice of termination;  
or

33.1.6. in the reasonable opinion of Scotland Excel, the Contractor is in material breach in accordance with Condition 34 (Termination of Contract) herein.

33.2. Once a decision has been taken to exercise suspension, Scotland Excel will:

- 33.2.1. notify the Contractor in writing of the reason for the suspension and the date the suspension takes effect; and
- 33.2.2. notify the Councils of the suspension.
- 33.3. During any period of suspension:
  - 33.3.1. the Contractor must continue to co-operate with and comply promptly with any reasonable requirements of Scotland Excel;
  - 33.3.2. current Purchase Orders may continue subject to the Council being satisfied that the Contractor has and will continue to perform the obligations stipulated in the relevant Purchase Order;
  - 33.3.3. Scotland Excel shall use reasonable efforts to ensure that no further Purchase Orders are referred to the Contractor; and
  - 33.3.4. following receipt of notification in accordance with this Condition 33 the Contractor will notify Scotland Excel of the current Purchase Orders made by the Councils and any such further information as may be reasonably required by Scotland Excel.
- 33.4. Scotland Excel and relevant Councils will work together with the Contractor to ensure there is no interruption to current Purchase Orders, and to address the issues that led to the suspension, and the Contractor shall cooperate fully with Scotland Excel and the Councils.
- 33.5. During the period of suspension, Scotland Excel will keep the Contractor informed of its assessment of what progress the Contractor has made in addressing the issues that led to suspension and the likely duration of the suspension.
- 33.6. Withdrawal of the notice issued in accordance with Condition 33.2 will be confirmed by Scotland Excel if and at such time as it becomes reasonably satisfied that the Contractor is able to and will perform its obligations under the Contract to the required standard.
- 33.7. Notwithstanding the use of Scotland Excel's powers of suspension under this Condition 33 Scotland Excel shall be entitled to take into account the occurrence and the resolution of the circumstances falling within this Condition 33 in its assessment of the Contractor's overall performance and to exercise its powers to terminate the Contract under Condition 34 (Termination of Contract).

## **34. Termination of Contract**

### **Termination by Scotland Excel to bring framework arrangement to early end**

34.1 Since the Contract is part of a wider framework arrangement, at any time when Scotland Excel takes the view that it would be in the interests of its Councils that the wider framework arrangement be terminated prior to its natural expiry, Scotland Excel shall have the right to terminate the Contract as part of the wider framework arrangement on written notice to the Contractor.

For the avoidance of doubt, this right may be exercised by terminating the Contract in whole or in part to implement the decision taken in relation to the wider framework agreement

34.2 Scotland Excel shall give notice of termination to the Contractor in writing and termination shall take effect as follows:

34.2.1 where in the opinion of Scotland Excel, the issue giving rise to the exercise of the right to terminate under this Condition is sufficiently serious, with immediate effect; or

34.2.2 in any other case, on the date specified in the notice which shall be no less than three months from the date on which the notice was given

### **Termination without Notice: Frustration**

34.2A The Contract shall be frustrated and will terminate automatically without the requirement for notice, in the event that the Contractor is dissolved or otherwise ceases to exist during the period of this Contract. For the avoidance of any doubt, termination will take effect from the date of dissolution, or the date when the Contractor ceased to exist.

### **Termination on Breach**

34.3 The Contractor shall give notice to Scotland Excel as soon as reasonably practicable if it finds it is unable permanently or temporarily to meet the Conditions.

### **Material breach – Capable of Remedy**

34.4 Where a party has committed a material breach of the Contract that is capable of remedy, the party who is not in material breach may serve a written notice on the party in material breach giving that party a fixed period in which to remedy the material breach. The period given shall be determined at the sole discretion of the party serving the notice, but must be reasonable given the particular circumstances and is always subject to a minimum period of two (2) weeks and a maximum of thirteen (13) weeks.

## **Material breach – Irremediable**

34.5 Without prejudice to the rights and remedies for breach or material breach of the Contract otherwise available to them under the Contract or at common law or under statute and without prejudice to Scotland Excel's obligations under the Contract, Scotland Excel and the Contractor shall each have the right, such right being exercised reasonably, to serve written notice on the other party to terminate the other party's participation in the Contract if the other party has committed a material breach of this Contract which is not capable of remedy, or if capable of remedy, has not been remedied to the reasonable satisfaction of the party serving the notice within the period specified in the notice.

34.6 Where material breach occurs as defined in this Condition 34 (Termination of Contract) herein, termination may take effect immediately, or within such alternative period as the parties shall mutually agree.

## **Material breach - Definition**

34.7 Each of the following is a material breach of the Contract by either party:

34.7.1 a breach of any of its obligations under this Contract which materially and adversely affects the performance of the Contract or the purchase of Goods under the Contract; or

34.7.2 a series of breaches of any of its obligations under the Contract, the cumulative effect of which is to seriously and adversely affect the performance of the Contract or the purchase of Goods under the Contract.

## **Material breach – Immediate Termination**

34.8 Each of the following is a material breach entitling the party not in breach to terminate the Contract immediately:

34.8.1 a breach by the Contractor in terms of Condition 6 (Failure to comply with requirements in "Information and Instructions to Tenderers"), Condition 44 (Data Protection) or Condition 45 (Confidentiality);

34.8.2 a breach by either party in terms of Condition 52 (Prevention of Corruption) or Condition 53 (Prevention of Fraud); or

34.8.3 the Contractor, at any time during the period of the Contract, is in one of the situations referred to in Regulation 58(1) (Exclusion grounds), including as a result of the application of Regulation 58(2).

## All other breaches

- 34.9 Where either Scotland Excel or the Contractor considers the other to be in non-material breach of the Contract, the party not in breach will be required to notify the details of the breach to the other party who shall use all reasonable endeavours to rectify the breach within fourteen (14) days of notification of the breach.
- 34.10 Further to and without prejudice to Condition 34.3, where the Contractor is unable to meet the Conditions only temporarily, the parties may agree an action plan setting out the failings in performance and their remedies together with the firm timescales for putting in place and maintaining those remedies. Where there is a failure by the parties to agree an action plan or a failure on the part of the Contractor to meet the Conditions in accordance with the agreed action plan, Scotland Excel may treat either form of failure as a material breach which is not capable of remedy, entitling Scotland Excel to terminate the Contract under Conditions 34.5 and 34.6 above.

## Termination of the Contract under Regulation 73

- 34.11 In addition to any of its other rights to terminate the Contract, Scotland Excel shall have the right to terminate the Contract where:-
- 34.11.1 the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) (modification of contracts during their term); or
  - 34.11.2 the Contractor has, at the time of contract award, been in one of the situations referred to in Regulation 58(1) (exclusion grounds), including as a result of the application of Regulation 58(2), and should therefore have been excluded from the procurement procedure.
- 34.12 Scotland Excel shall give notice of termination to the Contractor in writing and termination shall take effect as follows:
- 34.12.1 where in the opinion of Scotland Excel, the issue giving rise to the exercise of the right to terminate under this Condition is sufficiently serious, with immediate effect;
  - 34.12.2 in any other case, on the date specified in the notice which shall be no less than twenty eight (28) days from the date on which the notice was given.
- 34.13 Where Scotland Excel has terminated the Contract under Conditions 34.11 and 34.12, the Contractor shall have no right of compensation except where

it is established that Scotland Excel has acted or omitted to act negligently and this shall be the Contractor's only remedy.

### **General provisions applying to termination of the Contract**

- 34.14 Where Scotland Excel exercises any right to terminate the Contract, the termination may be in respect of the whole Contract or such parts of the Contract as Scotland Excel may specify.
- 34.15 Where the Contractor receives notice of termination of its participation in the Contract, it must take the following action as soon as possible and no later than the expiry date of said notice:
- 34.15.1 all information provided to the Contractor by Scotland Excel must be returned in whatever format the Parties shall agree, or destroyed by the Contractor which shall certify its destruction to Scotland Excel at the request of Scotland Excel; and
- 34.15.2 the Contractor must provide to Scotland Excel an updated report relative to the monitoring information sought in accordance with Conditions 18 (Performance and Management of the Service), 19 (Management Information), 20 (Community Benefit Requirement Information), 21 (Key Performance Indicators) and 22 (Account Management) in such format as Scotland Excel may determine.
- 34.16 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of any party accrued prior to termination (subject as otherwise expressly provided in this Contract). Those rights shall include the right of Scotland Excel or the Council or the Contractor as the case may be to claim damages against the other party arising out of that party's material breach of the Contract. The Conditions of this Contract which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 34.17 Nothing in this Condition shall limit the nature and extent of acts considered by a court of law or otherwise to be material breaches of this Contract. No granting of time or period of notice under this Condition shall be deemed to be a waiver of any right the party granting time or giving notice may have against the other party in respect of the other party's material breach of this Contract.
- 34.18 The Contractor hereby agrees that as there is no commitment to purchase nor any guarantee of the level or existence of business to be awarded under the Contract, upon termination for any reason, it shall not be entitled to make a claim against Scotland Excel in relation to costs howsoever incurred by the Contractor in securing the award of the Contract or from participation on the framework, nor in relation to the provision of Goods under the Contract, nor in relation to the loss of expected profits from the provision of Goods under the Contract.

### **35. Insolvency**

- 35.1 Without prejudice to any other rights of Scotland Excel or the Councils, Scotland Excel shall have the right to terminate the Contract by written notice immediately upon an Insolvency Occurrence.

### **36. Remedies Cumulative**

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.

### **37. Dispute Resolution**

- 37.1 The parties to the Contract shall attempt in good faith and in a spirit of mutual trust and co-operation to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) working days of either party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the director of Scotland Excel and to the finance director (or equivalent) of the Contractor.

- 37.2 Nothing in this Condition shall:

37.2.1 prevent the parties to the Contract from complying with, observing and performing all their obligations in respect of the Contract regardless of the nature of any dispute between them arising out of or in connection with the Contract and notwithstanding the referral of any such matter or dispute for resolution under this Condition;

37.2.2 diminish the parties to the Contract's responsibilities in respect of contract administration; nor

37.2.3 prevent any party to the Contract applying to a relevant court of competent jurisdiction to seek an appropriate remedy.

## **E. General Legal Conditions and Governing Law**

### **38. Liability, Indemnity and Insurance**

- 38.1 Nothing in this Contract shall be construed to limit or exclude either party's liability for:

38.1.1 death or personal injury caused by its negligence or that of its staff, sub-contractors or agents;

38.1.2 fraud or fraudulent misrepresentation by it or its staff;

38.1.3 any breach of any obligations implied by the Sale of Goods Act 1979 and the Sale and Supply of Goods Act 1994;

38.1.4 any claim under Condition 5 of these Conditions (Capacity and Eligibility to Contract);

38.1.5 any claim under the indemnity in Condition 50 (Intellectual Property Rights) or in respect of any claim under Condition 47 (Indemnity regarding Data Protection and Confidentiality); or

38.1.6 any other matter which, by Law, may not be limited or excluded.

38.2 Subject to Conditions 38.3 and 38.4, the Contractor shall indemnify and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of:

38.2.1 the supply, or late or purported supply, of the Goods or the performance or non-performance by the Contractor of its obligations under the Contract, including for the avoidance of doubt its obligations under any Call-off, or the presence of the Contractor or any staff on the Premises, including in respect of any death or personal injury;

38.2.2 loss of or damage to property; or

38.2.3 any other loss which is caused directly or indirectly by any act or omission of the Contractor.

The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.

38.3 [Not used].

38.4 Subject to Condition 38.1, in no event shall either party be liable to the other for any:

38.4.1 loss of profits;

38.4.2 loss of business;

38.4.3 loss of revenue;

38.4.4 loss of or damage to goodwill;

38.4.5 loss of savings (whether anticipated or otherwise); and/or

- 38.4.6 any indirect or consequential loss or damage.
- 38.5 The Council may, amongst other things, recover as a direct loss:-
- 38.5.1 any additional operational and/or administrative expenses arising from the Contractor's Default;
- 38.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Contractor's Default; and
- 38.5.3 the additional cost of procuring replacement services for the remainder of the period following termination of the Contract as a result of a Default by the Contractor.
- 38.6 Nothing in the Contract shall impose any liability on the Council in respect of any liability incurred by the Contractor to any other person, but this shall not be taken to exclude or limit any liability of the Council to the Contractor that may arise by virtue of either a breach of the Contract, or by negligence, on the part of the Council, or the Council's employees, servants or agents.
- 38.7 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss.
- 38.7.1 Such insurance shall be maintained for the duration of the period of the Contract and for a minimum of five (5) years following the expiration or earlier termination of the Contract.
- 38.7.2 Without prejudice to the foregoing obligations, the Contractor shall as a minimum, effect and maintain the insurances and levels of cover detailed in the Contract Notice for this Contract.
- 38.8 The Contractor shall give the Council, on request, copies of all insurance Policies referred to in this Condition 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.
- 38.9 If, for whatever reason, the Contractor fails to give effect to and 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 such arrangements from the Contractor.
- 38.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility

of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Condition 38.2.

38.11 Notwithstanding the minimum insurance requirements to participate in the framework as set down in this Condition, due to the nature of some of the Goods, the Council may decide to increase the minimum insurance requirements at the point of a Call-off. In these circumstances the Contractor will be allowed the opportunity to arrange to increase its insurance cover to the level stipulated by the Council and to reflect the increased cost (if any) to supply the Goods in meeting the increased requirement.

### **39 Health and Safety**

39.1. The Contractor must operate health and safety policies and must perform the Contract in accordance with all current health and safety legislation. If requested by Scotland Excel the Contractor shall provide Scotland Excel with a copy of its health and safety policy statement.

39.2 Scotland Excel must be notified immediately by the Contractor of any risks to health or safety which are identified or arise during the Contract including any known misuse of any Goods supplied.

### **40 Ethical Requirements**

The Contractor shall perform its obligations under the Contract in accordance with Scotland Excel's sustainable procurement strategy, with particular reference to Scotland Excel's policy of ethical procurement and sourcing (which is to promote appropriate standards regarding legal, ethical and social issues including, for example, the prohibition of modern slavery (as provided for in the Modern Slavery Act 2015), health and safety, security of employment rights, equality, corruption and fair trade, in particular in low cost or developing countries). If requested by Scotland Excel, the Contractor shall provide Scotland Excel with a copy of its sustainable and ethical sourcing policy (or equivalent).

### **41 Protection of Vulnerable Groups (Scotland) Act 2007**

41.1 Where the Contract requires the Contractor, his employees or agents to undertake "Regulated Work", as defined in Section 91 of the Protection of Vulnerable Groups (Scotland) Act 2007 ("the PVG Act"), the Contractor shall ensure that he complies with all of the relevant requirements, including the establishment of and adherence to effective procedures, of the PVG Act.

41.2 For the supply of the Goods which fall outside of the scope of Regulated Work under the PVG Act, the Contractor shall obtain the appropriate level of Disclosure directly from Disclosure Scotland.

- 41.3 The appropriate level of Disclosure shall be determined by reference to Part V of the Police Act 1997 and, for the avoidance of doubt, by reference to any regulations made under that Act and guidance issued by Disclosure Scotland.
- 41.4 The Contractor shall use the findings of the Disclosure as part of the process to make recruitment decisions and such suitable arrangements as are necessary for the safeguarding and protection of the interests of all persons falling within the definition of a child or protected adult as set down in Sections 97 and 94 respectively of the PVG Act. Where the Disclosure shows that the subject of the Disclosure has convictions, reprimands, warnings, cautions or any other relevant information, the Contractor shall conduct a risk assessment and use that assessment to protect the interests of all persons falling within the definition of a child or protected adult as set down in Sections 97 and 94 respectively of the PVG Act including without prejudice to the foregoing generality, prohibiting the subject of the Disclosure from being involved in the supply of the Goods to all persons falling within the definition of a child or protected adult as set down in Sections 97 and 94 respectively of the PVG Act.
- 41.5 The Contractor shall recheck the status of their existing employees, agents and anyone else involved in the supply of the Goods not less than every three (3) years in order to ensure that their Disclosure is up-to-date.
- 41.6 To ensure compliance with the requirements of this Condition and subject to the written consent of the subject of the Disclosure, the Contractor will share the findings of the Disclosure with the Council on request.

## **42 Equalities**

- 42.1 The Contractor hereby confirms that to the best of its knowledge and belief it has complied with the Law and Guidance relating to equalities, including without limitation the Equality Act 2010 (referred to in this Condition as the “Act”) and hereby agrees to continue to comply with the Act in a manner which is proportionate and relevant to the nature of the Contract.
- 42.2 The Contractor agrees to perform its obligations under the Contract in a non-discriminatory manner and shall promote equality and work towards reflecting best practice as identified in Guidance including the relevant Codes of Practice issued by the Equality and Human Rights Commission.
- 42.3 The Contractor may be subject to the requirements of the equality duty under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 in respect of the obligations under the Contract and any Call-off entered into there under. Where the requirement to comply with this equality duty exists, compliance with the requirements contained in Conditions 42.1 to 42.4 and Condition 42.10 herein will be evidence to Scotland Excel of the Contractor meeting this requirement.

- 42.4 The Contractor recognises that Scotland Excel has a responsibility to monitor the extent to which the performance of the Contract extends to socially excluded groups. In recognition of this, the Contractor agrees, where appropriate and practicable, to work towards providing information to Scotland Excel in relation to employment and provision of the Goods in respect of the protected characteristics as detailed in the Act, Part 2 Chapter 1.
- 42.5 The Contractor shall not discriminate, directly or indirectly or by way of victimisation or harassment against any person on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation contrary to the Act.
- 42.6 The Contractor shall notify Scotland Excel forthwith in writing as soon as it becomes aware of any investigation of, or proceedings brought against, the Contractor under the Act. The Contractor will inform Scotland Excel of any investigation decision or outcome of any proceedings as soon as practical upon receipt of said decision or outcome being made. For the avoidance of any doubt, this is in addition to the reporting requirements under Condition 24.6 of the Standard Terms of Supply set out at Appendix 1.
- 42.7 Where any such investigation is undertaken by a person or body empowered to conduct such investigation, and/or proceedings are instituted in connection with any matter relating to the Contractor's performance of its obligations under the Contract being in contravention of the Act, the Contractor shall free of charge:
- 42.7.1 provide any information requested in the timescales allotted unless to do so would be contrary to the Law;
  - 42.7.2 attend any meetings as required and permit the Contractor's staff to attend;
  - 42.7.3 promptly allow access to and investigation of any document or data deemed to be relevant;
  - 42.7.4 allow itself and any Contractor's staff to appear as witness in any ensuing proceedings; and
  - 42.7.5 co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 42.8 Where any such investigation is conducted or proceedings are brought under the Act which arise directly or indirectly out of any act or omission of the Contractor, its agents, subcontractors or staff, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor shall indemnify Scotland Excel with respect to all costs, charges and

expenses arising out of or in connection with any such investigation or which Scotland Excel may have been ordered or required to pay to a third party.

42.9 In recognition of Scotland Excel's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies under the Act, the Contractor may be subject to the requirement from time to time to complete a questionnaire and/or provide information to Scotland Excel on the extent and quality of the Contractor's equalities and diversity policies. Good practice in this regard will be recognised by Scotland Excel, however, poor practice may result in Scotland Excel issuing a mind to comply letter describing the nature of improvement required and the associated timescales. If the Contractor fails to improve practice in this regard Scotland Excel may take further action, up to and including the termination of the Contract.

42.10 The Contractor will extend the obligations under this Condition 42 to any arrangements with subcontractors.

### **43 Human Rights Act 1998**

43.1 The Contractor shall at all times comply with the obligations which are incumbent upon Scotland Excel as a "public authority" in terms of the Human Rights Act 1998 ("the 1998 Act") and of all secondary legislation made under the 1998 Act.

43.2 The Contractor shall take all reasonable steps to ensure the observance of this Condition by all servants, employees or agents of the Contractor and all subcontractors engaged by the Contractor.

43.3 The Contractor shall indemnify Scotland Excel against all losses, costs, expenses & damages and shall keep Scotland Excel indemnified against all liabilities, demands, claims, actions or proceedings incurred as a result of an alleged breach of this Condition by the Contractor.

43.4 Scotland Excel may monitor the Contractor's compliance with the 1998 Act at periodic intervals during the performance of the Contract.

43.5 Scotland Excel may wish to be provided with demonstrable evidence as to how the Contractor intends to secure compliance with the provisions of the 1998 Act.

### **44 Data Protection and Information Security**

44.1. Each party undertakes to comply with Data Protection Law. Without prejudice to the foregoing generality, the Contractor warrants that appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

- 44.2. The Contractor shall ensure that its staff and any person performing the Contract on its behalf are aware of and understand their obligations under Data Protection Law, and the limitations on the use of personal data imposed by this Contract.
- 44.3. The Contractor may be acting as a Data Controller in its own right, but where the Contractor is acting as a Data Processor on behalf of Scotland Excel, the Contractor undertakes to comply with the provisions of Data Protection Law, and will, where requested to do so by Scotland Excel enter into a separate Data Processing Agreement.
- 44.4. The Contractor shall indemnify and keep Scotland Excel indemnified as set out in Condition 47 (Indemnity regarding Data Protection and Confidentiality).
- 44.5. The Contractor shall have formal policies and procedures in place addressing the requirements of Data Protection Law including as related to information security awareness, training of staff regarding data protection and related security measures, security management of systems, both manual and electronic where Scotland Excel data may be held, as well as the physical security of buildings where information is held.
- 44.6. Access to Scotland Excel data, provided under the Contract, must be restricted by the Contractor and only provided to staff who have a direct requirement to process it in connection with the purpose of the Contract.
- 44.7. Scotland Excel reserves the right to visit Contractor sites which are involved in receiving, storing or processing Scotland Excel data to ensure that security controls continue to meet Scotland Excel standards.
- 44.8. The Contractor must notify Scotland Excel immediately of any risks or compromise to Scotland Excel data or any incidents or concerns which may impact on the confidentiality, integrity or availability of Scotland Excel data. Where risks are identified which are considered, in Scotland Excel's opinion (acting reasonably), to have been ignored or an inappropriate response provided, without prejudice to any other remedies it may have in accordance with the terms of the Contract or otherwise, Scotland Excel reserves the right to suspend the provision of information to the Contractor until appropriate remedial action has been taken.

## **45 Confidentiality**

The Contractor is expressly prohibited from using any information supplied by Scotland Excel or the Council or any information which comes to the Contractor's knowledge, including, but not limited to, personal data, for any purposes other than the performance of the Contract without the prior written consent of Scotland Excel or the Council, as the case may be, unless required by law and upon completion of the Contractor's obligations under the Contract, shall return or destroy securely, to the

satisfaction of Scotland Excel or the Council, as the case may be, all information provided, should Scotland Excel or the Council deem this appropriate.

#### **46 Public access to information**

No term of this contract, whether express or implied, shall preclude Scotland Excel or the Council from making public, if required under the Freedom of Information (Scotland) Act 2002 (referred to in this Condition as the “2002 Act”) or the Environmental Information (Scotland) Regulations 2004 (referred to in this condition as “the EIRS”) or both any information held relating to the Contract. In exercising its obligations under the 2002 Act and the EIRS, Scotland Excel or the Council, as the case may be, shall have due regard to the commercial interests of the Contractor but without prejudice to its duty to discharge its obligations under the 2002 Act or the EIRS. The interpretation of the Act by Scotland Excel or the Council, as the case may be, and any exemptions therein, will be final and conclusive subject only to any decision or binding ruling on the matter made by the courts. The Contractor will facilitate compliance by Scotland Excel or the Council, as the case may be, with its obligations under the 2002 Act and the EIRS and comply with any requests from Scotland Excel or the Council, as the case may be, for that purpose.

#### **47 Indemnity regarding Data Protection and Confidentiality**

The Contractor shall indemnify and keep Scotland Excel and the Council indemnified from and against all costs, claims, demands, damages, expenses, losses and liabilities (including, but not limited to, the imposition of any monetary penalty by the Information Commissioner) which may be incurred directly or indirectly in connection with a breach of Conditions 44 or 45 or both.

#### **48 Disclosure of information**

Scotland Excel and the Council may share any information contained in or relating to the Contract with the Competition and Markets Authority or any other relevant regulators.

#### **49 Company Profile**

Scotland Excel may, at any time, give the Contractor seven (7) days’ notice in writing requiring the Contractor to provide to Scotland Excel the Contractor’s company profile to include a complete list of all companies and organisations affiliated to the Contractor.

#### **50 Intellectual Property Rights**

- 50.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material:

50.1.1 furnished to or made available to the Contractor by or as directed by Scotland Excel shall remain the property of Scotland Excel; or

50.1.2 prepared by or for the Contractor as directed by Scotland Excel for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to Scotland Excel, and the Contractor shall not, and shall ensure that the staff shall not, (except when necessary for the performance of any contract following from this Contract) without prior approval, use or disclose any such Intellectual Property Rights.

50.2 The Contractor shall obtain approval before using any material, in relation to the performance of its obligations under the Contract which is or may be subject to any third party Intellectual Property Rights and shall indemnify Scotland Excel and the Council from and against all actions, suits, claims, demands, losses, changes, damages, costs and expenses and other liabilities arising from an infringement of any third party Intellectual Property Rights.

50.3 The Contractor shall not infringe any third party Intellectual Property Rights in supplying the Goods and the Contractor shall indemnify and keep indemnified and hold Scotland Excel and the Council harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which Scotland Excel and/or the Council may suffer or incur as a result of or in connection with any breach of this Condition, except where any such claim arises from:

50.3.1 items or materials based upon designs supplied by Scotland Excel; or

50.3.2 the use of data supplied by Scotland Excel which is not required to be verified by the Contractor under any provision of the Contract.

50.4 The Contractor shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights by Scotland Excel or the Contractor in connection with the performance of its obligations under any contract.

## **51 Change of Legislation**

51.1 The Contractor shall bear the cost of ensuring that the Goods shall comply with all applicable statutes, enactments, orders, regulations or other similar instruments and any amendments thereto, except where any such amendment could not reasonably have been foreseen by the Contractor at

the date when the Contract was concluded being the date on which Scotland Excel awarded the Contract to the Contractor.

51.2 Where such reasonably unforeseeable amendments are necessary, Scotland Excel and the Contractor shall use all reasonable endeavours to agree upon reasonable adjustments to the Prices affected by the amendment or amendments as may be necessary to compensate the Contractor for such additional costs as are both reasonably and necessarily incurred by the Contractor in accommodating such amendments.

51.3 Where agreement between Scotland Excel and the Contractor cannot be achieved under the immediately preceding Condition, Scotland Excel reserves the right to advise the Councils not to purchase the Goods affected by the amendment or amendments.

## **52 Prevention of Corruption**

52.1 Each party shall be entitled to terminate the Contract and recover any loss resulting if:

52.1.1 the other party has offered or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or refraining from doing any action in relation to the obtaining or execution of the Contract or any other contract with the first party or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other contract with the first party;

52.1.2 in relation to any contract with the first party, the other party has committed an offence under the Prevention of Corruption Acts 1889 to 1916; or

52.1.3 the other party shall have given any fee or reward, the receipt of which is an offence under subsection (2) of section 68 of the Local Government (Scotland) Act 1973.

52.2 Each party shall comply with all the requirements of the Bribery Act 2010 and any form of guidance issued in respect of the Bribery Act 2010.

52.3 Each party reserves the right to terminate the Contract without incurring any penalty whatsoever and to recover from the other party the amount of any loss resulting from such termination if the other party shall have acted in a manner contrary to the requirements of the Bribery Act 2010 in respect of any direct or indirect business carried out for the purposes of the Contract.

52.4 The terms of this Condition 52 shall apply in full in any circumstance where the action or act described has been done by any person employed by, acting on behalf of or representing a party to the Contract, whether or not with that party's knowledge.

## **53 Prevention of Fraud**

- 53.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by staff and the Contractor (including its shareholders, members and directors) in connection with the receipt of monies from Scotland Excel and/or the Council.
- 53.2 The Contractor shall notify Scotland Excel immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 53.3 If the Contractor or its staff commits fraud in relation to the Contract or any contract with the Council or Scotland Excel, Scotland Excel may:
- 53.3.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by Scotland Excel resulting from the termination, including the cost reasonably incurred by Scotland Excel of making other arrangements for the supply of the Goods and any additional expenditure incurred by Scotland Excel as a result of the Contractor's fraud; or
  - 53.3.2 recover in full, from the Contractor any loss sustained in consequence of any such fraud.

## **54 Force majeure**

- 54.1 Neither party shall be liable to the other party for any delay in performing, or failure to perform, its obligations under the Contract to the extent that such delay or failure is a result of force majeure.
- 54.2 Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such force majeure. However, if such force majeure prevents either party from performing its material obligations under the Contract for a period in excess of three (3) Months, either party may terminate the Contract with immediate effect by notice.
- 54.3 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to force majeure only if that agent, subcontractor or supplier is itself impeded by force majeure from complying with an obligation to the Contractor.
- 54.4 If either party becomes aware of force majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described herein it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

## **55 Waiver**

No failure or delay by either party to enforce any right or remedy to which it is entitled or to require performance by the other party of any of the terms of the Contract shall be a waiver of any such right or remedy nor shall it in any way affect its right subsequently to enforce such provisions.

## **56 Severability of Conditions**

If any Condition of the Contract to any extent becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining Conditions of the Contract shall not in any way be affected.

## **57 TUPE**

57.1 Without prejudice to the Contractor's obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"), at any time and within twenty (20) working days of being requested to do so by Scotland Excel, acting on behalf of the Councils using the Contract, the Contractor shall fully and accurately disclose to Scotland Excel all "employee liability information" as defined by TUPE.

57.2 Scotland Excel acting on behalf of the Councils using the Contract shall be entitled to use this information for the purposes of TUPE and for the purposes of re-tendering. Scotland Excel may include this information in any documentation for the re-tender and may share this information with any prospective Contractor of the services.

57.3 The Contractor shall indemnify Scotland Excel against any claim or any liability arising from any deficiency or inaccuracy in the information that the Contractor is required to provide in terms of this Condition.

57.4 The Contractor shall indemnify Scotland Excel and the Council in respect of all employee liabilities arising from its failure to perform and discharge its obligations under this Condition, in respect of any employees falling within the terms of TUPE and that for the period up to and including the date of expiry or termination of the Contract or the date of its ceasing to trade, whatever the case may be.

## **58 Serving of Notices**

58.1 Any notice or other communication to be given from one party to the other under the Contract shall be valid only if it is made in writing.

58.2 Further any such notice or other communication which is to be given by either party to the other, except for the purpose of court proceedings, shall be given by letter sent by hand, or by a signed for special delivery postal service (for example, Royal Mail Signed For or Royal Mail Special Delivery Guaranteed), or by Electronic means. Such letters shall be addressed to the Contractor or to Scotland Excel in the following manner –

- a) For the Contractor – to the nominated Contractor representative at the postal address or email address provided by the Contractor for the purpose of serving of notices, as recorded in the Contractor’s Acceptance Schedule.

For Scotland Excel – for service by post to: The Chief Executive, Scotland Excel, Renfrewshire House, Cotton Street, Paisley, PA1 1AR; or for service by Electronic means: to the Scotland Excel email contact address for the purpose of serving of notices, detailed in the Contractor’s Acceptance Schedule.

58.3 Where a notice or communication is delivered by hand, it shall be deemed to have been delivered when it is left and signed for at the relevant recipient’s address set out in Condition 58.2.

58.4 Where a notice or communication is sent by special delivery postal service or by Electronic means to the relevant address set out in Condition 58.2, then provided it is not returned as undelivered, the notice or communication shall be deemed to have been given:

58.4.1 where sent by special delivery postal service, 2 Working Days after the day on which the letter was posted,

58.4.2 where sent by Electronic means on the next Working Day after the day on which it was dispatched by Electronic means,

58.4.3 in either case, upon acknowledgement of receipt of such notice or communication, if sooner.

58.5 Either party may change its address for serving of notices by sending a notice in accordance with this Condition. The Contractor must advise Scotland Excel of a change of address for service as soon as practicable, and in any event no later than seven days after the change, by sending a notice in accordance with this Condition.

58.6 Scotland Excel shall not be responsible for any failure to intimate or delay in intimation arising out of or in consequence of the Contractor’s omitting to advise Scotland Excel of a change under this Condition.

58.7 A Notice under Condition 35 (Insolvency) of these General Conditions of Contract, may be sent to the Contractor’s trustee, receiver, liquidator or administrator, as appropriate, by the methods of service permitted in this Condition 58 to the postal or email address detailed in the notice of their appointment.

58.8 This Condition 58 does not apply to the service of any proceedings or other documents in any court proceedings or, where applicable, any arbitration.

**59            The Contract (Third Party Rights) (Scotland) Act 2017**

Unless otherwise explicitly provided for, the Contract shall not create any rights in favour of third parties under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or otherwise invoke any provision of the Contract.

**60            Law of Scotland and Scottish Courts**

The Contract will be governed by the Law of Scotland and subject to the exclusive jurisdiction of the Scottish Courts.

## **SCHEDULE: Definitions and Interpretation**

### **A. Definitions**

“Call-off” means any contract between the Council and the Contractor pursuant to a Purchase Order consisting of the Standard Terms of Supply, Special Conditions of Contract (where applicable) and the Purchase Order.

“Candidate” means an economic operator (other than a Tenderer) that has sought an invitation or has been invited to take part in any of the five procedures listed in Regulation 5.

“Community Benefit” has the meaning given to it in section 24 of the Procurement Reform (Scotland) Act 2014.

“Competitive Order” means an order not all the terms of which are laid down in the Contract including, for example and without prejudice to the foregoing generality, an order for any make, model or type of Goods not specified in the Contract or any alternative make, model or type of Goods to that specified within the lots which is required by a Council, or where a large quantity of Goods is required and the Contract contains insufficient provision, in the reasonable opinion of the Council, for bulk discounts, or where a Council has specific delivery requirements.

“Conditions” means the conditions referred to in the Tender Documents, including the Contract, and any supplementary conditions and modification thereof.

“Contract” means a framework agreement concluded between Renfrewshire Council, as the contracting authority whose function is to enter contracts at the direction of the joint committee formed under Section 57 of the Local Government (Scotland) Act 1973 operating under the name of Scotland Excel, and the Contractor, including these General Conditions, from which the Standard Terms of Supply are derived, any Special Conditions and any supplementary conditions and all specifications and other documents that are relevant to the Contract.

“Contract Notice” means the contract notice published for this contract in accordance with the Law.

“Contractor” means the person who by the Contract undertakes to supply or render Goods for Scotland Excel and/or the Councils as is provided by the Contract and where the Contractor is an individual or a partnership, the expression shall include the personal representatives of that individual or of the partners or either of them, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Contractor with the consent of Scotland Excel, and where the context permits, includes a person whom Scotland Excel has agreed to allow to participate in the Contract but who is not at the relevant time a party to a Contract.

“Contractor’s Acceptance Schedule” means the schedule issued to the Contractor with the letter of acceptance concluding the Contractor’s appointment to the Contract. “Control” means the ability to direct the affairs of another, whether by virtue of the ownership of shares, contract or otherwise.

“Council” is a reference to any Scottish local authority being a member of Scotland Excel or any other person or body who is entitled to place a Purchase Order in terms of the Contract.

“Data Protection Law” means:

- 1) the Law in force in the United Kingdom relative to data protection, the processing of personal data and privacy, together with any primary or secondary legislation implementing or supplementing it and as the same may be amended, updated or replaced over time. For the avoidance of any doubt, this includes any Law that, in respect of the United Kingdom, replaces or enacts into domestic law the General Data Protection Regulation or any other Law relating to data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union; and
- 2) the Guidance and codes of practice issued by the relevant statutory regulator in the United Kingdom: the Information Commissioner.

“Default” means any breach of the obligations of Scotland Excel, a Council or the Contractor (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of Scotland Excel, a Council or the Contractor in connection with or in relation to the subject matter of the Contract or a Call-off, as appropriate, and in respect of which either party to the Contract or Call-off, as appropriate, is liable to the other.

“Directive” shall mean Directive 2014/24/EU of the European Parliament and of the Council of the European Union on public procurement and repealing Directive 2004/18/EC.

“Disclosure” means a criminal record certificate or enhanced criminal record certificate (also referred to as an “Enhanced Disclosure”) issued by Disclosure Scotland under Part V of The Police Act 1997.

“Disclosure Scotland” means an agency of the Scottish Government that discharges the functions of the Scottish Ministers under the Police Act 1997 and in particular provides disclosure of conviction information and manages the PVG Scheme on behalf of the Scottish Government.

“Electronic” means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and industry codes of practice 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.

“Goods” means all goods and materials that the Contractor is required under the Contract via a Call-off to supply or does supply or any services or works that it is required to supply under the Contract via a Call-off.

“Guidance” means any applicable guidance relative to the Law to which Scotland Excel, the Councils and/or the Contractor have a duty to have regard to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Contractor by Scotland Excel, the Councils and/or Scottish Ministers and/or any relevant body.

“Insolvency Occurrence” means where:

- a) the Contractor is a company and passes a resolution for winding-up or dissolution (other than for, and followed by, an amalgamation or reconstruction), or an administrator, administrative receiver, receiver, supervisor or manager, liquidator or provisional liquidator is appointed in terms of Law by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge, or the company makes a composition or arrangement with its creditors, or the court makes an administration order or a winding-up order, or the company is made subject of a debt arrangement scheme or the company is struck off in accordance with the Law;
- b) the Contractor is an individual and is apparently insolvent or a petition is appointed for the Contractor’s bankruptcy or for the sequestration of his/her estate or the Contractor makes a composition, conveyance or assignment or any arrangement with or for the benefit of creditors, or a trustee or administrator is appointed to manage his/her affairs, or has had a moratorium granted against him by the Accountant in Bankruptcy; or is subject to a debt arrangement scheme or protected trust deed or trust deed;
- c) the Contractor is a firm or a number of persons acting together in any capacity and a petition is presented for the Contractor to be wound up as an unregistered company, or if any of the events described in paragraph 1) and 2) of this definition occur in respect of the firm or any partner or any of those persons; or the firm or any partner or any of those persons is made subject to a debt arrangement scheme;
- d) the Contractor being the subject of any process or event similar or analogous to the events specified above in any jurisdiction outside Scotland; or where a separate legal entity is the subject of any process or event similar or analogous to those specified above, and where the provision of the Service by the Contractor is reliant on a direct or indirect relationship between the Contractor and that entity.

“Insurance” means such obligations relating to insurance as are detailed in the Tender Documents and thereafter incorporated in the Contract.

“Intellectual Property Rights” 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.

“Invoice” means an accurate and undisputed written request for payment of a sum or sums due and payable for Goods agreed to be purchased by the Council from the Contractor in terms of a Purchase Order.

“Law” means:

- a) Any applicable common law, statute or proclamation or any delegated or subordinate legislation or regulation, including for the avoidance of doubt obligations relating to the payment of taxes and social security contributions;
- b) All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in the United Kingdom unless and until any such right, power, liability, obligation, restriction, remedy or procedure is repealed or otherwise reenacted or replaced by the exercise of powers by or on behalf of the relevant Parliament within the United Kingdom.
- c) Any applicable judgement of a relevant court of law which is a binding precedent in Scotland;
- d) Guidance; and
- e) Any other directives or requirements of any regulatory body with which the Contractor is bound to comply;

in all cases as they apply in Scotland.

“Mini Competition Process” means the procedure used to determine the award of a Competitive Order detailed in Condition 9.3 of the Contract.

“Mini Competition Award Criteria” means the award criteria to be applied to each Competitive Order. This will be based on the criteria set out in the Tender Documents for the Contract.

“Month” means a calendar month.

“Person” includes a firm or company.

“Premises” means the location(s) where the Goods are to be delivered (or supplied, or provided, or undertaken, as appropriate) under the Contract or a Call-off / Purchase Order.

“Price” means the Price applying at the time of placing a Purchase Order determined in accordance with the Contract payable by the Council to the Contractor under any Call-off for the full and proper performance by the Contractor of its obligations under the Call-off and including, for the avoidance of doubt, all delivery charges and related costs such as duties, tariffs and taxes.

“Purchase Order” means any order for Goods placed by a Council under the Contract including any Competitive Order placed with the Contractor under Condition 9.3 of the Contract.

“Regulations” shall mean the Public Contracts (Scotland) Regulations 2015, and “Regulation” shall be interpreted accordingly.

“Scotland Excel” means the joint committee formed under Section 57 of the Local Government (Scotland) Act 1973, operating under the name of Scotland Excel having its headquarters at Renfrewshire House, Cotton Street, Paisley, PA1 1AR or where the context so requires, Renfrewshire Council as the contracting authority acting as directed by Scotland Excel, and, for the purposes of Conditions 26 and 52 shall be deemed to include a Council as herein defined.

“Standards” mean the standards applying to the Goods by Law when supplied in Scotland or the equivalent national standards applying in the Contractor’s place of manufacture of the Goods provided always that the said equivalent national standards comply fully with the relevant Law.

“Standard Terms of Supply” are the terms set out in Appendix 1 to which any Purchase Order or Competitive Order, placed under the Contract as specifically provided under Condition 9 of the Contract, is subject.

“Tender Documents” means the Invitation to Tender, Conditions of Tender and any other accompanying documents as amended, supplemented and clarified through the messaging facility by Scotland Excel fully completed and signed by an authorised signatory and submitted by the Tenderer relating to the Contract.

“Tender Specification” or “Specification” means the tender specification that forms part of the Tender Documents.

“Tenderer” means the person or firm or company completing the Tender Documents.

“Treaties” means the Retained Treaties as defined in the Law, including The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 and “Treaty” shall be interpreted accordingly.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“Variation” means a variation in the provisions of the Contract made in terms of Condition 23.

“Week” means 7 consecutive days starting Monday and ending on the following Sunday.

“Working Day” means a day other than a Saturday, Sunday or bank holiday in Scotland within the meaning of the Banking and Financial Dealings Act 1971.

“Written” or “in writing” means any expression consisting of words or figures which can be read, reproduced and subsequently communicated and it may include information transmitted and stored by Electronic means.

Any reference to “a signature” or “signed” includes reference to a:

- signature being signed using Electronic means and which is in accordance with the applicable Law including the Electronic Communications Act 2000, Electronic Identification and Trust Services for Electronic Transactions Regulations 2016, the Electronic Documents (Scotland) Regulations 2014 and the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 as appropriate; or
- a wet ink signature by an individual duly authorised to sign any document relating to the Contract.

## **B. Interpretation**

1. The masculine includes the feminine, and vice versa.
2. The singular includes the plural, and vice versa.
3. Reference to Law shall be construed as a reference to the Law as amended or reenacted by any subsequent Law.
4. Anything including any decision or action that Scotland Excel is required or authorised to take or do under the Contract may be taken or done by any person so authorised either generally or specially by Scotland Excel.
5. The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”.
6. Unless otherwise specifically stated in the Contract, the Standard Terms of Supply, the Tender Documents or the Tender Specification, any requirement or specification in any of these documents shall be deemed to be accompanied by the words “or equivalent” in accordance with Regulation 43 of the Public Contracts (Scotland) Regulations 2015.
7. References to Scotland Excel or to Councils shall be construed as including reference to their successors.

**APPENDIX: Standard Terms of Supply.**