

General Conditions of Contract – Contents (January 2012)

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1. GENERAL CONDITIONS OF CONTRACT

Introduction

Scotland Excel is formed by agreement among Local Authorities throughout Scotland and is maintained through a Joint Committee under Section 57 of the Local Government (Scotland) Act 1973. The Joint Committee is comprised of representatives from all of the Member Councils and is responsible for regulating the operation of Scotland Excel. Scotland Excel will prepare, negotiate and approve Contracts on behalf of the Member Councils or other organisations using Scotland Excel's services. For further information about Scotland Excel, tenderers are referred to the website www.scotland-excel.org.uk

This Contract is being arranged by Scotland Excel on behalf of its Member Councils. Tenderers should note that as well as the Member Councils, Scotland Excel has a number of Associate Members who will be entitled to participate in the Contract as authorised by the Scotland Excel Joint Committee. Any Associate Members who elect to participate in the Contract must be allowed the same prices, terms and conditions. A list of all bodies entitled to participate in the Contract which will be those bodies listed on Scotland Excel's website and those bodies listed on the following websites of centres of expertise as at the date of the contract notice relating to this contract, links as follows – [INSERT ADDRESSES] - is available on request and a copy will be provided to the Contractor(s).

Information and Instructions to Tenderers

A. Capacity to Contract

The Tenderer confirms to the best of its knowledge that there are no restrictions of any kind which in any way affect its capacity to contract. If any such restrictions exist or arise, Scotland Excel will have the option to terminate any contract which purports to have been entered into with the Tenderer. The Tenderer shall indemnify Scotland Excel in full for any resulting loss.

B. Submission of Tenders

Paper Tenders

One complete copy of the Tender with no pages omitted must be submitted signed in ink by the Tenderer or by a person authorised by the Tenderer. If the signatory is not the Tenderer, the Tender must be accompanied by a letter from the Tenderer confirming that person's authority to bind the Tenderer.

Tenders must be sealed in the addressed envelope provided, and returned to the address specified on the Tender to arrive no later than 12 noon on the closing date stated on the envelope and in the Tender Documents.

Tenderers must not make any mark on the official returning envelope which would identify the Tenderer or disclose any detail of the content of the tender.

Any clauses, conditions, amendments to specification or other qualifications which a Tenderer wishes to make conditional to an offer MUST be entered by the Tenderer on the YELLOW PAGE of the tender and not on the Tender Documents and any clauses, conditions, amendments to specification or other qualifications entered elsewhere on the Tender Documents shall be invalid, unenforceable and shall not form part of any Contract which may follow upon this tender. All entries on the tender must be electronically generated typewritten or made in black ink.

Electronic Tenders

The complete electronic tender with no pages omitted must be submitted signed by the Tenderer or by a person authorised by the Tenderer. If the signatory is not the Tenderer then the Tenderer must provide at time of tendering written confirmation of the signatory's authority to bind the Tenderer.

Any clauses, conditions, amendments to specification or other qualifications which a Tenderer wishes to make conditional to an offer MUST be entered by the Tenderer on the COMMENTS Section provided at the end of the particular question set/or envelope in which the text being commented upon appears. The Tenderer must clearly state the specific point/or clause/or tender question to which he takes objection or wishes to modify or amend or on which he wishes to comment. Any clauses, conditions, amendments to specification or other qualifications entered elsewhere on the tender or not appropriately referenced or both shall be invalid, unenforceable and shall not form part of any contract which may follow upon this tender.

All Tenders

Tender Documents issued to the Tenderer may only be passed on to other parties associated with the Tenderer for the purposes only of the proposed tender submission.

Tenders will be regarded as FIRM PRICE OFFERS for the duration of the Contract period unless the Tenderer states otherwise on the YELLOW PAGE of the tender (paper tenders) or in the PRICING Section of the tender (electronic tenders). Prices quoted on the tender must be stated in pounds sterling and strictly net 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 work people and all matters relating to the satisfactory execution of the Contract and for insurance of items against loss or damage by fire or by any other cause and against injury to persons and damage to property arising out of or in the course of or caused by the carrying out of the work involved in this Contract.

Completed tenders must be submitted to arrive not later than 12 noon on the closing date stated on the invitation to tender and the tender document. LATE OFFERS WILL NOT BE CONSIDERED

Tenderers offering settlement discounts for prompt payments of invoices must state such terms on either the YELLOW PAGE of the tender (paper tender) or in the

PRICING Section of the tender (electronic tenders). Any settlement discounts will apply to the nett prices quoted on the tender.

No promotional material or other documentation may be enclosed with any tender unless required by Scotland Excel in the Special Conditions of Contract.

Scotland Excel takes no responsibility for identifying any clerical errors or misunderstanding in any tenders submitted. Tenderers must therefore ensure that the content of any tender submitted is complete and accurate.

Without prejudice to the last paragraph, where examination of a tender reveals obvious errors or discrepancies which would affect the tender figures, these errors will be dealt with in the following manner:-

1. Any **obvious arithmetical errors** will be rectified by Scotland Excel checking the tenders and the amount of tender shall be held to be the amount so rectified and the Tenderer informed in writing of the corrected amount.
2. Where there is an obvious and genuine error in **rates** occurring, the Tenderer will be given the opportunity of either confirming that they agree to their tender being considered with the error remaining or withdrawing their tender. This procedure shall be undertaken in writing. If the Tenderer decides to withdraw its tender, it will not be considered for acceptance. The Tenderer will not be given the opportunity to submit an amended tender.

Entries on the Tender

All submissions and responses required in the Tender Documents must be provided at the points in the Tender Documents set aside for them and in any format stipulated within the Tender Documents. Where a Tenderer fails to comply with this requirement, Scotland Excel shall be entitled to treat the Tender Documents as invalid.

Use of Recycled Materials

1. Scotland Excel will consider the use of products containing recycled materials whenever these can be purchased at no extra cost and can be used without adverse effect on the service provided.
2. In addition, Tenderers must state if any products containing recycled materials can be labelled accordingly at no extra cost.

C. Environmental Policy

Tenderers and Contractors are requested to satisfy themselves that no Goods supplied under the Contract will endanger the health of any person, will cause significant damage to the environment during manufacture, use or disposal, will consume a disproportionate amount of energy during manufacture, use or disposal, will cause unnecessary waste because of over packaging or because of an unusually short shelf

life or will contain materials derived from threatened species or threatened environments.

D. Validity Period

All offers submitted to Scotland Excel must remain open for acceptance for a period of One hundred and twenty (120) days from the tender closing date.

E. Post Tender Negotiation

After the closing date and time, Tenderers may not supply any unsolicited information. Following evaluation of the tenders received, Scotland Excel reserves the right subject always to the Public Contract (Scotland) Regulations 2012, to enter into negotiations, including negotiations on price, with the Tenderer who has submitted the most economically advantageous tender or, where the Contract will be awarded on a shared basis, with the Tenderers who have submitted the most economically advantageous tenders.

F. Acceptance of tenders and the mandatory standstill period

1. Scotland Excel is not bound to accept the lowest or any tender and reserves the right to accept any tender in whole or in part. Any acceptance will be by the issue of a letter of acceptance on behalf of Scotland Excel.
2. Where a decision is taken to accept a tender, Scotland Excel may require to implement a mandatory standstill period of a minimum of 10 days between notification to Tenderers and Candidates Concerned of that decision and the date when the acceptance is issued. However, the mandatory standstill period does not apply in certain circumstances including procurements that are below the relevant current thresholds for application of the EU Directives on public procurement contracts proceeding from a current framework agreement and procurements that are otherwise outwith the scope of the EU Directives (e.g. Part B Services).
3. Where the mandatory standstill period is required, notification of the decision will be issued on behalf of Scotland Excel to Tenderers. The notification will include –
 - (a) the award criteria and the weightings that applied to these.
 - (b) where practicable, the score the Tenderer obtained against the award criteria.
 - (c) where practicable the scores the winning Tenderer(s) obtained.
 - (d) the names of the winning Tenderer(s).
 - (e) in the case of an unsuccessful Tenderer a summary of the reasons why the Tenderer was unsuccessful.

(f) in the case of an unsuccessful Tenderer, the characteristics and relative advantages of the winning tender(s). and

(g) a precise statement of the effect of the mandatory standstill period.

4. Tenderers must note that Scotland Excel reserves the right to provide to every Tenderer a list of the names of all who tendered and, where appropriate, the scores each Tenderer obtained against the award criteria.
5. At the end of the standstill period, provided that there has been no judicial interruption of the decision in the form of an order from a court of competent jurisdiction that either the decision should be set aside or its implementation suspended pending a full hearing of the matter, Scotland Excel may proceed to issue a letter of acceptance to the successful Tenderer(s) and shall confirm to all other Tenderers that their tenders have been unsuccessful.
6. As a separate right, an unsuccessful Tenderer may request in writing and Scotland Excel shall advise him, within 15 days of the date of receiving its request in writing, of the information detailed in subparagraphs (d), (e) and (f) of F3 above.

G. Estimated Quantities

Any quantities stated in the tender are approximate and provisional and may be increased or decreased by Scotland Excel without invalidating any Contract.

H. Equivalentents and Alternatives

Any requirement or specification in the Tender Documents shall be deemed to be accompanied by the words "or equivalent" in accordance with Regulation 9 of the Public Contracts (Scotland) Regulations 2012.

If a Tenderer offers equivalentents to the requirements specified in the tender document, it will be the Tenderer's responsibility to demonstrate to Scotland Excel that the equivalentents are fit for the purpose for which they are required.

I. Public access to information

Tenderers are reminded that Scotland Excel and the Council require to comply with the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004. Further, Scotland Excel and the Council may share any information contained in a tender with the Office of Fair Trading or any other relevant government regulators.

J. Collusion

Scotland Excel reserves the right not to consider a tender and to terminate the Contract and recover from the Tenderer the amount of any loss resulting if the Tenderer (or its representative, whether or not with the Tenderer's knowledge) has colluded in tendering for the contract or in tendering or refraining from tendering for any other

contract or has used corrupt or illegal practices either in obtaining or executing the Contract or any other contract with Scotland Excel.

Tenderers must complete the NO COLLUSION CERTIFICATE in the Tender Documents.

K. Prevention of Corruption

1. Scotland Excel shall be entitled not to consider a tender and to terminate the Contract and recover from the Tenderer any loss resulting if the Tenderer, or any person employed by or acting on behalf of the Tenderer (whether or not with the Tenderer's knowledge), has offered or given 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 or for having done or refrained from doing any action in relation to the obtaining or execution of the Contract or any other contract with Scotland Excel or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other contract with Scotland Excel, or if in relation to any contract with Scotland Excel, the Tenderer or any person employed by or acting on behalf of the Tenderer has committed an offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward, the receipt of which is an offence under Sub-Section (2) of Section 68 of the Local Government (Scotland) Act 1973.
2. The Tenderer shall comply with all the requirements of the Bribery Act 2010 and any formal guidance issued in respect of the Bribery Act 2010 in all matters relating to the Contract.

L. Conditions submitted by Tenderer

Tenders made subject to conditions which are additional or alternative to the General Conditions of Contract and the Special Conditions of Contract as stated in the Tender Documents may not be considered and may be refused on the grounds of such conditions alone.

M. Change in Tenderer's tender declaration

N.B. If at any time after the Tenderer has submitted a tender to Scotland Excel, the information submitted by the Tenderer in the tender declaration changes, the Tenderer shall advise Scotland Excel of the changed information immediately. Scotland Excel shall not be responsible for any failure to intimate or delay in intimation arising out of or in consequence of a Tenderer's omitting to advise Scotland Excel of a change under this paragraph.

General Conditions of Contract (For Framework Contracts, Call off Contracts and Single Purchase Contracts)

1.1 Definitions and Interpretation

- 1.1.1 The definitions in this clause shall apply to the Information and Instructions to Tenderers, the General Conditions of Contract and the Special Conditions of Contract.
- 1.1.2 The following expressions shall have the meaning given to them hereunder with respect to the interpretation of the Contract except where the context otherwise requires:
- a) “Candidate” means an economic operator (other than a Tenderer) which applied to be included amongst the economic operators to be selected for or to negotiate the Contract or applied to be included amongst the economic operators to be selected to participate in a dialogue in relation to the Contract.
 - b) “Candidate Concerned” means a Candidate which has not been informed that they have been unsuccessful in accordance with the Public Contracts (Scotland) Regulations 2012.
 - c) “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.
 - d) “Conditions” means the conditions referred to in the Tender Documents and any supplementary conditions and modification thereof.
 - e) “The Contract” means a Framework Agreement concluded between Renfrewshire Council as the contracting authority for Scotland Excel and the Contractor, including these General Conditions, any Special Conditions and any supplementary conditions and all specifications and other documents that are relevant to the Contract.
 - f) The “Contractor” means the person who by the Contract undertakes to supply or render the 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.

- g) “Control” means the ability to direct the affairs of another, whether by virtue of the ownership of shares, contract or otherwise.
- h) “Council” is a reference to any Council or Associate Member of Scotland Excel who is entitled to place orders in terms of the Contract.
- i) “Default” means any breach of the obligations of Scotland Excel 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 or the Contractor in connection with or in relation to the subject matter of the Contract and in respect of which either party is liable to the other.
- j) “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.
- k) “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.
- l) The “Goods” means all goods and materials that the Contractor is required under the Contract to supply or does supply or any services or works that he is required to supply under the Contract.
- m) “Guidance” means any applicable guidance relative to the Law to which Scotland Excel and/or the Contractor has 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 and/or Scottish Ministers and/or any relevant regulatory body.
- n) “Insurance” means such obligations relating to insurance as are detailed in the Tender Documents and thereafter incorporated in the Contract.

- o) "Law" means:-
 - (i) any applicable statute or proclamation or any delegated or subordinate legislation or regulation.
 - (ii) any enforceable community right within the meaning of Section 2(1) of the European Communities Act 1972.
 - (iii) any applicable judgement of a relevant court of law which is a binding precedent in Scotland.
 - (iv) Guidance.
 - (v) any other directives or requirement of any regulatory body with which the Contractor is bound to comply.
- p) "Mini Competition Process" means the procedure used to determine the award of a Competitive Order detailed in Clause 1.22.2.
- q) "Mini Competition Award Criteria" means the award criteria to be applied to each Competitive Order. This will be based on the criteria used to determine the original appointment of Contractors to the Contract but the weighting applied to each criteria may vary according to the specific requirements of each individual Competitive Order.
- r) "Month" means a calendar month.
- s) "Person" includes a firm or company.
- t) "Premises" means the location(s) where the Goods are to be delivered under the Contract.
- u) "Purchase Order" means any order for Goods placed by a Council under the Contract including any Competitive Order placed with the Contractor under Condition 1.22.
- v) "Scotland Excel" is a reference to Scotland Excel or where the context so requires, Renfrewshire Council as the contracting authority acting on behalf of Scotland Excel, and, for the purposes of Conditions 1.24, 1.25, 1.28, 1.32, 1.44, and 1.52-1.56 (inclusive) shall be deemed to include the Council as herein defined.
- w) "Tender Documents" means the Invitation to Tender, Conditions of Tender and any other accompanying documents fully completed and signed by an

authorised signatory and submitted by the Tenderer relating to the Contract.

- x) "Tender Specification" means the tender specification that has been sent to prospective Tenderers.
- y) "Tenderer" means the person or firm or company completing the tender document.
- z) "Variation" means a variation in the provisions of the Contract made in terms of Condition 1.34.
- aa) "Week" means 7 consecutive days starting Monday and ending on the following Sunday.
- bb) "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.
- cc) Any reference to "a signature" or "signed" includes reference to a signature being signed using electronic means.

1.1.3 The masculine includes the feminine.

1.1.4 The singular includes the plural, and vice versa.

1.1.5 Reference to an enactment, order, regulation or similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument and the reference, for the avoidance of doubt, shall be deemed to include all and any guidance issued in connection with such an enactment, order, regulation or similar instrument.

1.1.6 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.

1.1.7 The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation".

1.1.8 Any requirement or specification shall be deemed to be accompanied by the words "or equivalent" in accordance with Regulation 9 of the Public Contracts (Scotland) Regulations 2012.

1.2 Contracting Authority

For the purposes of this Contract the contracting authority shall be Renfrewshire Council acting for Scotland Excel in terms of Regulation 3(2) of Public Contracts (Scotland) Regulations 2012.

1.3 Capacity and Eligibility to Contract

1.3.1 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.

1.3.2 Without prejudice to the immediately preceding paragraph, the Contractor confirms that to the best of his knowledge, none of the offences detailed in Regulation 23(1) and grounds detailed in Regulation 23(4) of the Public Contracts (Scotland) Regulations 2012 applies to it as at the date of submission of its tender and undertakes to advise Scotland Excel if, at any time, subsequently during the term of the Contract, conviction of any said offence or the occurrence of any such ground happens.

In the event of any breach of this Condition, Scotland Excel shall have the option to terminate the Contract and the Contractor shall indemnify Scotland Excel in full for any resulting loss.

1.4 Variation of Contract Conditions

The Conditions of Contract which apply to this tender may only be varied with the written agreement of Scotland Excel. 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.

1.5 Scotland Excel Logo

The Tenderer must not use the Scotland Excel logo or disclose any details of any relationship with Scotland Excel to any other party without the prior written consent of Scotland Excel.

1.6 Advertising & Marketing Information

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

1.7 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 terminate the Contract all in terms of Clause 1.26 (Obligation to Conform) below.

1.8 Ethical Requirements

The Contractor shall perform its obligations under the Contract in accordance with Scotland Excel's ethical sourcing policy, which is to promote appropriate standards regarding legal, ethical and social issues including, for example, health and safety, security of employment rights, equality, corruption and fair trade, in particular in low cost or developing countries. If requested by Scotland Excel, the Contractor shall provide Scotland Excel with a copy of its ethical sourcing policy.

1.9 Equality

1.9.1 The Contractor hereby confirms that to the best of its knowledge and belief it has complied with the Equality Act 2010 (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.

1.9.2 The Contractor agrees to perform its obligations under the Contract in a non-discriminatory manner and shall promote equality and work towards achieving best practice as identified in the codes of practice issued by the Equality and Human Rights Commission.

1.9.3 The Contractor recognises that Scotland Excel has a responsibility to monitor the extent to which performance of the Contract extends to socially excluded groups. In recognition of this, the Contractor agrees, where appropriate and practicable, to work towards providing monitoring information to Scotland Excel in relation to employment and service provision by the following categories:

- (i) gender reassignment.
- (ii) age.
- (iii) marriage and civil partnership.
- (iv) sexual orientation.
- (v) disability.
- (vi) religion or belief.
- (vii) sex.
- (viii) pregnancy, maternity. and
- (ix) race.

- 1.9.4 The Contractor shall not discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of gender reassignment, age, marriage and civil partnership, sexual orientation, disability, religion or belief, sex, pregnancy and maternity and race contrary to the Act.
- 1.9.5 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.

Where any investigation is undertaken by a person or body empowered to conduct such investigation, and/or proceedings are instituted in connection with any matter relating to the Contractor's performance of the Contract being in contravention of the Act, the Contractor shall free of charge:

- (i) provide any information requested in the timescale allotted.
- (ii) attend any meetings as required and permit the Contractor's staff to attend.
- (iii) promptly allow access to and investigation of any document or data deemed to be relevant.
- (iv) allow itself and any staff of the Contractor to appear as witness in any ensuing proceedings. and
- (v) co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

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 or subcontractors, or the staff of the Contractor, 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 Scotland Excel may have been ordered or required to pay to a third party.

- 1.9.6 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 required to complete a questionnaire and/or provide information to Scotland Excel's officers on the extent and quality of the Contractor's equalities and diversity policies and practice.

Good practice in this regard will be recognised by Scotland Excel, but, poor practice may result in Scotland Excel issuing a mind to comply letter describing the nature of improvement required and 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 with Scotland Excel.

- 1.9.7 In the event that the Contractor enters into any subcontract in connection with the Contract, it shall impose obligations on its subcontractors in proportionate and relevant terms substantially similar to those imposed on it pursuant to this clause.

1.10 Pricing and payment

- 1.10.1 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 work people and all matters relating to the satisfactory execution of the Contract and for insurance of items against loss or damage by fire or by any other cause and against injury to persons and damage to property arising out of or in the course of or caused by the carrying out of the work involved in this Contract.

- 1.10.2 Any decrease in price must be notified to Scotland Excel and applied immediately.

- 1.10.3 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 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.

- 1.10.4 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:

- 1.10.4.1 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, for the purpose of payment alone, where the purchaser 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 purchaser then, to the extent that it relates to such Goods, the invoice shall be

treated as valid and payment shall be made to the sub-contractor without deduction.

- 1.10.4.2 Which notifies the sub-contractor that the contract forms part of a larger contract for the benefit of Scotland Excel and that should the sub-contractor have any difficulty in securing the timely payment of an invoice that matter may be referred by the sub-contractor to Scotland Excel, Unit 5, Anchor Mill, 7 Thread Street, Paisley.
- 1.10.4.3 In the same terms as that set out in this Condition 1.10 (including for the avoidance of doubt this Condition 1.10.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and sub-contractor as the case may be.

1.11 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 resile from the Contract in whole or in part where Scotland Excel considers proposed increases in prices to be unreasonable.

1.12 Prevention of corruption

1.12.1 Scotland Excel shall be entitled to terminate the Contract and recover from the Contractor any loss resulting if the Contractor, or any person employed by or acting on behalf of the Contractor (whether or not with the Contractor's knowledge), has offered or given 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 or for having done or refrained from doing any action in relation to the obtaining or execution of the Contract or any other contract with Scotland Excel or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other contract with Scotland Excel, or if in relation to any contract with Scotland Excel, the Contractor or any person employed by or acting on behalf of the Contractor has committed an offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward, the receipt of which is an offence under Sub-Section (2) of Section 68 of the Local Government (Scotland) Act 1973.

1.12.2 The Contractor shall comply with all the requirements of the Bribery Act 2010 and any form of guidance issued in respect of the Bribery Act 2010. Scotland Excel reserve the right to cancel the Contract without incurring any penalty whatsoever and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor or his representative (whether with or without the knowledge of the Contractor) shall have acted in a manner contrary to the requirements under the Bribery Act 2010 in respect of any direct or indirect business carried out for the purposes of the Contract with Scotland Excel.

1.13 Prevention of Fraud

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.

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.

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:

- (a) 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
- (b) recover in full from the Contractor any loss sustained in consequence of any breach of this Condition.

1.14 Data Protection

The Contractor undertakes to comply with the provisions of the Data Protection Act 1998 and in particular, 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.

1.15 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.

1.16 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.

1.17 Indemnity regarding Data Protection and Confidentiality

The Contractor shall indemnify and keep Scotland Excel and the Council indemnified from and against all costs, claims, damages, expenses, losses and liabilities which may be incurred directly or indirectly in connection with a breach of Conditions 1.14 or 1.15 or both.

1.18 Disclosure of information

Scotland Excel and the Council may share any information contained in or relating to the Contract with the Office of Fair Trading or any other relevant government regulators.

1.19 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.

1.20 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.

1.21 Standard Terms of Supply

Any Purchase Order and any Competitive Order, as specifically provided under Condition 1.22 placed under this Contract shall be subject to the Standard Terms of Supply set out at Appendix 1.

1.22 Orders and mini competitions for Goods

1.22.1 Where a Council requires to purchase Goods through this Contract it may:-

- (a) 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
- (b) 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, where any item not specified in the Contract, or any alternative make, model or type of Goods to that specified within each lot is required, 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 the Council has specific delivery requirements, the Council may award its Competitive Order requirements following a Mini Competition Process conducted in accordance with the requirements of the Public Contracts (Scotland) Regulations 2012.
- (c) Where a Competitive Order is required a Council, at its sole discretion, may instruct the carrying out of a Mini Competition Process in accordance with the provisions of Clause 1.22.2.

1.22.2 Prior to providing any Contractor with a Competitive Order under the Contract the Council shall:-

- 1.22.2.1 where the Contract has been awarded in lots, identify the relevant lot that the Competitive Order requirement falls into.
- 1.22.2.2 identify the Contractors capable of providing the Competitive Order requirement within the relevant lot.
- 1.22.2.3 supplement and refine the Conditions and vary the relevant award criteria set out in the Tender Documents only to the extent permitted by and in accordance with the requirements of the Public Contracts (Scotland) Regulations 2012.

- 1.22.2.4 invite Contractors within the relevant lot identified at 1.22.2.2 above to participate in a Mini Competition Process for its Competitive Order requirement in accordance with the Public Contracts (Scotland) Regulations 2012 and in particular:-
- (a) make available to Contractors, in accordance with paragraph (b) below, an invitation to which sets out the specific requirements for the Competitive Order and the Mini Competition Award Criteria.
 - (b) consult in writing with each Contractor capable of performing the Contract within the relevant lot and invite them to submit a tender in writing for each specific contract lot to be awarded within a specified time limit.
 - (c) 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
 - (d) require each Contractor to either submit a proposal in writing, in accordance with the Council's requirements in terms of paragraph (a) above, or decline the invitation to take part in the Mini Competition Process.
- 1.22.2.5 apply the Mini Competition Award Criteria to determine which of the tenders submitted by the Contractors through the Mini Competition Process is most economically advantageous and use this as the basis of its decision to award its requirements.
- 1.22.2.6 where the Council decides to make an award following a Mini Competition Process, place a Competitive Order with the successful Contractor which:-
- (a) states the requirements.
 - (b) identifies the contract lot or lots.
 - (c) states the price payable in accordance with the Mini Competition Process submitted by the successful Contractor.
 - (d) incorporates the Conditions applicable to the Competitive Order as supplemented and refined. and

(e) contains the Standard Terms of Supply set out in Appendix 1. and

- 1.22.2.7 advise the unsuccessful Contractors in writing as soon as reasonably practicable of its decision on the award of the Competitive Order.
- 1.22.3 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 other period specified in the invitation to tender issued by the Council).
- 1.22.4 Notwithstanding the fact that the Council has followed the procedure set out above in 1.22.2 the Council shall be entitled at all times to decline to make an award. Nothing in this Contract shall oblige the Council to place any Competitive Order in relation to this Condition.
- 1.22.5 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.
- 1.22.6 The terms of any award or Competitive Order for purchase of Goods through this Contract shall be finalised no later than the expiry date of the Contract, to ensure that the relevant terms and conditions of the Contract are validly applied to such award or Competitive Order.

1.23 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 the Council. Scotland Excel shall not 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.

1.24 Delivery of Goods

- 1.24.1 Goods must be properly packed and secured and shall be delivered by the Contractor at the time and place or places and in the manner specified in the Contract or, if not so specified, as specified in a Purchase Order in terms of Condition 1.21 hereof. Any Goods shall remain at the sole risk of the Contractor until delivered to and accepted by an authorised officer on behalf of the Council.

- 1.24.2 No mechanical offloading, lifting, moving or other equipment nor any other form of assistance will be supplied to the Contractor for the purposes of offloading and placing Goods in Premises.
- 1.24.3 Every employee of the Contractor and any subcontractor must clearly display an identity card showing the name and address of the Contractor and bearing the name and a photograph of the employee. Identity cards must be shown before access to Premises will be permitted.
- 1.24.4 Where deliveries are made to schools, the Contractor's employees must report first to the school office and vehicles may be driven through school playgrounds only on the approval and direction of an authorised person.
- 1.24.5 All Goods delivered to Premises must be accompanied by a receive/delivery note which shall clearly state a description of the Goods delivered, the quantities of each item and the official order number. Corresponding invoices must also contain this information.
- 1.24.6 If any of the Goods are not delivered within the time or times specified in the Contract where not so specified, in a Purchase Order, Scotland Excel may, without prejudice to any other remedies, give notice to the Contractor and terminate the Contract either in respect of these Goods or in respect of all Goods to which the Contract relates other than those delivered in accordance with the Contract before the date of termination of the Contract.

1.25 Failure to Meet Specification

- 1.25.1 All Goods supplied to Scotland Excel must conform to the agreed specification or be shown by the Contractor to be fit for the required purpose to the satisfaction of Scotland Excel or may be rejected by Scotland Excel.
- 1.25.2 Unless the specification states otherwise, the Goods shall be strictly in accordance with the latest relevant British Standards Institution or EU specification where such exists and to the satisfaction of Scotland Excel.
- 1.25.3 Goods rejected under this Condition shall be removed by the Contractor at its own expense within seven (7) days of the date of receipt of notification of rejection. If the Contractor fails to remove them within this period, Scotland Excel shall be entitled to return the rejected Goods or any of them at the Contractor's risk, and recover all costs incurred from the Contractor.

- 1.25.4 Goods rejected under this Condition will not have been delivered under the Contract and the Contractor shall, within the time for delivery stipulated in the Contract or official order form or such other time as Scotland Excel may allow, deliver, at the Contractor's expense, satisfactory Goods in place of those rejected.
- 1.25.5 Nothing in these Conditions, or any amendment agreed thereto, will exclude the terms of the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994. If the Goods or any part thereof are unsatisfactory in the opinion of Scotland Excel, then Scotland Excel may, at its own discretion, determine the Contract as a whole or only in respect of the Goods which are unsatisfactory.

1.26 Obligation to Conform

- 1.26.1 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 and to provide the Goods in accordance with any Purchase Order or Competitive Order to the satisfaction of any party placing such a Purchase Order or Competitive Order under the Contract.
- 1.26.2 If the Contractor fails to conform to any Conditions of the Contract Scotland Excel may terminate the Contract by giving the Contractor seven (7) days notice in writing and may enter into another contract with some other company, firm or person. All losses, expenses, costs and charges incurred in this connection shall be a debt due by the original Contractor to Scotland Excel and may be deducted from any monies in the hands of any Council or may be recoverable by legal action.
- 1.26.3 Where Scotland Excel has terminated the Contract under Condition 1.26.2 above, it may enter into another contract with some other company, firm or person. All losses, expenses, costs and changes incurred in this connection shall be a debt due by the original Contractor to Scotland Excel and may be deducted from any monies in the hands of any Council or may be recoverable by legal action.

1.27 Determination of Contract

- 1.27.1 Without prejudice to any other rights to terminate the Contract, if Scotland Excel at any time wishes to determine the Contract, notice in writing shall be given to the Contractor and twenty eight (28) days after delivery of such notice, the Contract, shall in all respects, cease and determine.

1.27.2 The Contractor agrees that upon termination for any reason or expiry of the contract 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 providing the Goods under the contract nor in relation to the loss of expected profits from the provision of Goods under the Contract.

1.27.3 Any termination of the Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of the Contract which is expressly, or by implication, intended to come into force or continue in force on or after that termination.

1.28 Replacement of Rejected Goods

Where Scotland Excel has determined the Contract under any Condition of Contract, without prejudice to any other rights available to it, it may replace all or any of the Goods in respect of which the Contract was so determined. There shall be recoverable from the Contractor the amount by which the cost of replacing these Goods exceeds the amount which would have been payable to the Contractor in respect of these Goods if they had been delivered in accordance with the Contract.

1.29 Discontinued Goods

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

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

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

1.30 Contractor's Liabilities

- 1.30.1 The Contractor agrees to indemnify Scotland Excel against death of or bodily injury to any person and loss of or damage to any Council or third party property arising through or in consequence of his operations in supplying and delivering or providing Goods to Scotland Excel and as a result of any act of negligence or omission on the part of the Contractor, employees or contractors employed by them.
- 1.30.2 For the avoidance of doubt, the Contractor's liability is to indemnify Scotland Excel and any Council from any claims from employees of the Contractor and any third party as a result of bodily injury, loss of or damage to any property of any nature whatsoever, and includes an indemnity to Scotland Excel in respect of all claims and in respect of costs and expenses reasonably incurred by Scotland Excel in the reinstatement of any property lost or damaged.

1.31 Management and Product Information

To enable Scotland Excel to monitor and analyse the progress of the Contract, the Contractor shall provide such management information including electronic catalogues as may be necessary in a format and frequency as prescribed by Scotland Excel. Scotland Excel reserves the right to alter the style, content and frequency of the management information as it deems necessary.

1.32 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.

1.33 Additional, New and Innovative Products

- 1.33.1 It is recognised that during the period of the Contract, Scotland Excel and/or a Contractor may identify additional, new or innovative products that could be supplied under this Contract. In such circumstances, the procedures set out in this Condition shall apply. No such products may be supplied under this Contract unless and until written consent is given by Scotland Excel.
- 1.33.2 If additional, new or innovative products are identified by a Contractor, that Contractor shall notify Scotland Excel in writing. Prices must not be included with this notification.
- 1.33.3 Where any such products are identified, by either Scotland Excel or a Contractor, Scotland Excel, at its sole discretion, shall decide whether, in principle, such products could be supplied under this Contract. If so, Scotland Excel shall invite bids for these products from all Contractors

who are eligible under the Contract to supply such products. Full details of how and by when bids must be submitted shall be included in the invitation from Scotland Excel. The award criteria and weightings shall be the same as those which apply to this tender. All Contractors invited to submit bids shall be notified of the outcome in writing.

- 1.33.4 Should Scotland Excel decide that such products may not be supplied under this Contract, it shall notify all Contractors in writing and this decision shall be final.

1.34 Variations: Changes to Contract Requirements

- 1.34.1. Scotland Excel shall be entitled to order any variation to the Contract that it considers to be desirable. 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.
- 1.34.2 Where Scotland Excel is considering ordering a variation, it shall notify the Contractor in writing. Within the timescale stipulated by the Council in this notification, the Contractor shall confirm in writing the effect the variation shall have on the Contract including any effect on prices. Should Scotland Excel wish to proceed with the variation it shall confirm this in writing to the Contractor. No variation shall be made until this has been done.
- 1.34.3. Should the Contractor wish to amend this Contract, the Contractor shall submit, as a minimum, the following information to Scotland Excel:
- (a) the reason for the proposed change.
 - (b) full details of the proposed change.
 - (c) the price, if any, of the proposed change.
 - (d) details of the likely impact, if any, of the proposed change on other aspects of this Contract.
- 1.34.4 Scotland Excel shall respond to the proposed change in writing and, if appropriate, representatives of Scotland Excel and the Contractor shall meet to discuss the proposed change.
- 1.34.5 Any change proposed by the Contractor shall constitute an amendment to this Contract only once it has been accepted in writing by Scotland Excel. Until such time, the proposed change shall be neither binding nor implemented. Any work undertaken by the

Contractor, its subcontractors or agents in connection with any proposed change to this Contract, shall be undertaken entirely at the expense and liability of the Contractor.

1.35 Serving of Notices

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.

Further any such notice or other communication which is to be given by either party to the other shall be given by letter (sent by hand, post or by the recorded or special delivery service), or by facsimile transmission or electronic mail. Such letters shall be addressed to the Contractor or to Scotland Excel in the following manner –

- (a) For the Contractor – to the address stated in the Tender Declaration.
- (b) For Scotland Excel – The Director, Scotland Excel, Unit 5, Anchor Mill, 7 Thread Street, Paisley, PA1 1JR

Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours after the time of transmission, in the case of electronic mail or facsimile transmission or sooner where the Contractor or Scotland Excel acknowledges receipt of such letters, facsimile transmission or items of electronic mail.

The Contractor shall advise Scotland Excel, as soon as practicable and in any event no later than seven days after any change, of a change of address for service by sending a notice in accordance with this Condition.

Scotland Excel may change its address for service by sending a notice in accordance with this Condition.

1.36 Change in Status of Contractor (Assignment, Subcontracting, Change of Control)

1.36.1 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.

- 1.36.2 Notwithstanding the terms of Clause 1.36.1 above of this Contract the Contractor may assign to another person (an “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 Clause 1.20 of this 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 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.
- 1.36.3 No change in the Control of the Contractor shall take place without the prior written consent of Scotland Excel. Any decision by Scotland Excel and the granting of consent shall be without prejudice to the decision of any Council with regard to its consent in respect of any Call-off with the Contractor proceeding from the Contract.
- 1.36.4 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.

1.37 Insolvency

Without prejudice to any other rights of Scotland Excel, Scotland Excel shall have the right to terminate the Contract by written notice immediately -

- (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 or manager is appointed in terms of statute 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
- (b) the Contractor is an individual and is apparently insolvent or a petition is appointed for the Contractor’s bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made

against the Contractor, or 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 affairs. or

- (c) the Contract 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 in (a) and (b) of this Condition occur in respect of the firm or any partner or any of those persons. or
- (d) any event similar to those listed in (a), (b) or (c) above occurs under the law of any other jurisdiction.

1.38 Disruption

- 1.38.1 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.
- 1.38.2 The Contractor shall immediately inform Scotland Excel of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 1.38.3 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.
- 1.38.4 If the Contractor's proposals are considered insufficient or unacceptable by Scotland Excel acting reasonably, then the Contract may be terminated with immediate effect by Scotland Excel by notice.

1.39 Change of Legislation

- 1.39.1 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.
- 1.39.2 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.

- 1.39.3 Where agreement between Scotland Excel and the Contractor cannot be achieved under the immediately preceding paragraph Scotland Excel reserves the right to resile from the Contract in whole or in part.

1.40 Force majeure

- 1.40.1 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
- 1.40.2 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 6 Months, either party may terminate the Contract with immediate effect by notice.
- 1.40.3 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, sub-contractor or supplier is itself impeded by force majeure from complying with an obligation to the Contractor.
- 1.40.4 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.

1.41 Health and Safety

- 1.41.1 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.
- 1.41.2 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.
- 1.41.3 While on the Premises, the Contractor shall comply with any health and safety measures implemented by Scotland Excel and/or the Council in respect of the Premises and shall notify Scotland Excel immediately of

any incident occurring while the Contractor is on the Premises which causes or is likely to cause any personal injury or damage to property.

- 1.41.4 Scotland Excel shall notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its duties under the Contract.

1.42 Protection of Vulnerable Groups (Scotland) Act 2007

- 1.42.1 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.
- 1.42.2 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;
 - 1.42.2.1 The appropriate level of Disclosure shall be determined by reference to Part V of the Police Act 1997 (as amended) and, for the avoidance of doubt, by reference to any regulations made under that Act and guidance issued by Disclosure Scotland;
 - 1.42.2.2 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.
 - 1.42.2.3 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;

- 1.42.2.4 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.

1.43 Arbitration

- 1.43.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract 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.
- 1.43.2 In the event that the parties are unable to negotiate a settlement, all disputes, differences or questions which arise between Scotland Excel and the Contractor relating to the Contract or any matter arising under or out of the Contract, other than any matter or thing that, in terms of the Contract, the decision of Scotland Excel is to be final and conclusive, shall be referred to a single arbitrator to be mutually chosen or, failing agreement to be chosen by the Sheriff Principal of the Sheriffdom of Glasgow and Strathkelvin whose decision shall be final, binding and conclusive.
- 1.43.3 Any reference to arbitration shall be a submission within the meaning of the Arbitration (Scotland) Act 2010 ("the Act") which Act shall apply excluding rules 22, 26, 29, 32, 35, 41, 43, 46, 47, 51, 52, 58, 69 and 81, unless otherwise agreed in writing by the Council and the Contractor. It is hereby agreed by the Council and the Contractor that for the purposes of the arbitration the arbitrator shall have the power to make provisional awards as provided in the Act, rule 53. For the avoidance of any doubt, the arbitration proceedings shall be seated in Scotland and shall be governed by, and interpretations made in accordance with Scots Law.
- 1.43.4 Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

1.44 Intellectual property rights

- 1.44.1 All intellectual property rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents,

patterns, models, designs or other material:

- (a) furnished to or made available to the Contractor by or on behalf of Scotland Excel shall remain the property of Scotland Excel; or
- (b) prepared by or for the Contractor on behalf of 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.

1.44.2 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.

1.44.3 The Contractor shall not infringe any intellectual property rights of any third party 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:

- (i) items or materials based upon designs supplied by Scotland Excel. or
- (ii) the use of data supplied by Scotland Excel which is not required to be verified by the Contractor under any provision of the Contract.

1.44.4 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 right by Scotland Excel or the Contractor in connection with the performance of its obligations under any contract.

1.45 Audit

The Contractor shall keep and maintain until 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, all expenditure reimbursed by Scotland Excel and/or the Council, 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.

1.46 Waiver

No failure or delay by Scotland Excel to enforce any right or remedy to which Scotland Excel is entitled, or to require performance by the Contractor 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 the right of Scotland Excel subsequently to enforce such provisions.

1.47 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.

1.48 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.

1.49 Conflict with Special Conditions

In the event of any conflict between these General Conditions of Contract and any Special Conditions of Contract the terms of the Special Conditions of Contract shall prevail.

1.50 Headings

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

1.51 Law of Scotland

All Contracts with Scotland Excel will be governed by the Law of Scotland and subject to the exclusive jurisdiction of the Scottish Courts.

Additional General Conditions for Contracts including services.

1.52 Contractor's Personnel

The Contractor shall provide full particulars as required by Scotland Excel of all persons who are or who may at any time be employed on the Contract. The Contractor shall take all reasonable steps to avoid changes of staff performing the Contract and shall provide Scotland Excel with one month's written notice and full particulars of any proposed additional or replacement staff. At any time, Scotland Excel may give notice to the Contractor that a person is not to be involved further with the performance of the Contract. The decision of Scotland Excel regarding the Contractor's personnel shall be final and conclusive.

The Contractor shall take all necessary steps to avoid unauthorised persons from gaining access to the Premises.

1.53 Performance of Service

The Contractor shall perform its obligations:

- (a) in accordance with the terms of the Contract and each Purchase Order.
- (b) with appropriately experienced, qualified and trained personnel and with all due skill, care and diligence.
- (c) in accordance with Good Industry Practice.
- (d) in complete and continuous compliance with the obligations relating to insurance.
- (e) in compliance with all applicable laws. and
- (f) where applicable, with materials conforming with all terms of the Contract.

1.54 Management of the Service

1.54.1 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.

1.51.2 The Contractor shall provide all the necessary facilities, materials and equipment and suitably qualified and experienced personnel to perform the Contract.

1.55 Human Rights Act 1998

1.55.1 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 .

- 1.55.2 The Contractor shall take all reasonable steps to ensure the observance of this clause by all servants, employees or agents of the Contractor and all subcontractors engaged by the Contractor.
- 1.55.3 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 clause by the Contractor.
- 1.55.4 Scotland Excel may monitor the Contractor's compliance with the 1998 Act at periodic intervals during the performance of the Contract.
- 1.55.5 Scotland Excel may wish to be provided with demonstrable evidence as to how the Tenderer intends to secure compliance with the provisions of the 1998 Act.

1.56 TUPE

- 1.56.1 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, the Contractor shall fully and accurately disclose to Scotland Excel all "employee liability information" as defined by TUPE.
- 1.56.2 Scotland Excel 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 provider of the services.
- 1.56.3 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.
- 1.56.4 The Contractor shall indemnify Scotland Excel and the Council in respect of all employee liabilities arising from his failure to perform and discharge his 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 his ceasing to trade, whatever the case may be.