

## APPENDIX 1 - Standard Terms of Supply (December 2011)

### Contents

1 - Definitions and Interpretation .....	3
2 - Variation of Conditions .....	6
3 - Capacity to Contract .....	6
4 - Mistakes in Information .....	6
5 - Price, Payment and VAT .....	6
6 - Recovery of Sums Due .....	7
7 - Unauthorised Supply or Provision of Goods.....	7
8 - Delivery of Goods .....	7
9 - Contractor's Staff .....	8
10 - Protection of Vulnerable Groups (Scotland) Act 2007 .....	8
11 - Guarantee.....	9
12 - Warranties and Representations.....	9
13 - Contract Performance.....	10
14 - Monitoring.....	11
15 - Failure to Conform .....	11
16 - Failure to Meet Specification.....	11
17 - Contractor's Liabilities .....	12
18 - Return of Goods.....	12
19 - Discontinued Goods.....	12
20 - Determination of Call-off .....	13
21 - Replacement of Goods Following Determination of a Call-off.....	13
22 - Intellectual Property Rights .....	13
23 - Health and safety.....	14
24 - Equality.....	14
25 - Environmental Policy .....	16
26- Ethical Requirements.....	16
27- Public Access to Information.....	16
28 - Prevention of Fraud .....	16
29 - Prevention of Corruption .....	17
30 - Data Protection .....	17
31 - Disruption.....	17
32 - Publicity .....	18

33 - Company Profile .....	18
34 - Change of Legislation .....	18
35 - Force Majeure.....	18
36 - Insolvency.....	19
37 - Assignment, Subcontracting etc. ....	19
38 - Serving of Notices.....	20
39 - Audit .....	20
40 - Waiver .....	21
41 - Severability of Conditions.....	21
42 - Remedies Cumulative .....	21
43 - Conflict.....	21
44 - Headings .....	21
45 - Dispute Resolution.....	21
46 - Law of Scotland .....	22

## **APPENDIX 1 - Standard Terms of Supply**

### **1 - Definitions and Interpretation**

- 1.1 - The following expressions unless previously or otherwise defined in the Framework Contract shall have the meaning given to them hereunder with respect to the interpretation of the contract except where the context otherwise requires:
- a) “Call-off” means any contract between the Council and the Contractor pursuant to a Purchase Order consisting of these Standard Terms of Supply and the Purchase Order.
  - b) “Competitive Order” means an order not all the terms of which are laid down in the Framework 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 Framework 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 Framework Contract contains insufficient provision, in the reasonable opinion of the Council, for bulk discounts, or where a Council has specific delivery requirements.
  - c) The “Contractor” means the person who under the Framework Contract undertakes to supply the Goods or to render such other service for the Council as is provided by the Framework 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 Framework Contract may be assigned by the Contractor with the consent of Scotland Excel or to whom the benefit of any Call-off may be assigned by the Contractor with the consent of the Council and where the context permits, includes a person whom the Council has agreed to allow to participate in the Call-off but who is not at the relevant time a party to the Call-off.
  - d) “Control” means the ability to direct the affairs of another, whether by virtue of the ownership of shares, contract or otherwise.
  - e) “Council” is a reference to the Council or associate member of Scotland Excel placing the Purchase Order for Goods under the Framework Contract.
  - f) “Default” means any breach of the obligations of the 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 the Council 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.
  - g) “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.

- h) “Framework Contract” means the framework contract concluded between Renfrewshire Council as the contracting authority for Scotland Excel and the Contractor from which these Standard Terms of Supply are derived.
- i) “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.
- j) The “Goods” means all goods and materials that the Contractor is required under a Call-off to supply or does supply or any services or works that he is required to supply under a Call-off.
- k) “Guidance” means any applicable guidance relative to the Law to which the Council 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 the Council and/or the Scottish Ministers and/or any relevant regulatory body.
- l) “Insurance” means such obligations relating to insurance as are detailed in the Tender Documents and thereafter incorporated in the Framework Contract.
- m) “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.
- n) “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.
- 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, and
  - (v) any other directives or requirements of any regulatory body with which the Contractor is bound to comply in each case in force in Scotland.

- p) “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 Framework Contract but the weighting applied to each criterion may vary according to the specific requirements of each individual Competitive Order.
  - q) “Mini Competition Process” means the procedure used to determine the award of a Competitive Order detailed in Clause 1.22.2 of the Framework Contract.
  - r) “Month” means a calendar month.
  - s) “Person” includes a firm or company or any other legal entity
  - t) “Premises” means the location(s) where the Goods are to be delivered as set out in the Purchase Order.
  - u) “Price” means the price determined in accordance with the Framework 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.
  - v) “Purchase Order” means any order for Goods placed by the Council under the Framework Contract including any Competitive Order placed with the Contractor under Condition 1.20 of the Framework Contract.
  - w) “Scotland Excel” is a reference to Scotland Excel.
  - x) “Week” means 7 consecutive days starting Monday and ending on the following Sunday.
  - y) “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.
  - z) “Written” or “in writing” means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means.
- 1.2 - The masculine includes the feminine.
- 1.3 - The singular includes the plural, and vice versa.
- 1.4 - Reference to an enactment, order, regulation, or similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended 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.
- 1.5 - Anything, including any decision or action that Scotland Excel is required or authorised to take or do under the Framework Contract may be taken or done by any person so authorised either generally or specially by Scotland Excel.

- 1.6 - The words “include”, “includes”, or “including” are to be construed as if they were immediately followed by the words “without limitation”.
- 1.7 - Unless otherwise specifically stated in these Standard Terms of Supply, 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.

## **2 - Variation of Conditions**

These Standard Terms of Supply may not be varied by either party or by both parties save for any necessary information required to complete any Call-off or Purchase Order.

## **3 - Capacity to Contract**

The Contractor confirms that 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, the Council will have the option to terminate any Call-off or other agreement or contract which purports to have been entered into with the Contractor and the Contractor shall indemnify the Council in full for any resulting loss.

## **4 - Mistakes in Information**

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

## **5 - Price, Payment and VAT**

In consideration of the Contractor’s performance of its obligations under each Call-off, the Council shall pay the Price.

The Council shall, in addition to the Price and following evidence of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Goods supplied in accordance with each Call-off.

The Council shall pay all sums due to the Contractor within 30 days of receipt of a valid invoice in respect of each Purchase Order, submitted monthly in arrears. For the avoidance of doubt the Contractor shall accept payment by any procurement card specified by the Council.

The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.

Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under a Call-off, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice. The Contractor shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time or times in respect of the Contractor’s failure to account for or to pay any VAT relating to payments made to the Contractor under any Call-off. Any amounts due under this

Condition shall be paid by the Contractor to the Council not less than 5 Working Days before the date upon which the tax or other liability is payable by the Council. The Contractor shall not suspend the supply of the Goods unless the Contractor is entitled to terminate the Call-off under these Standard Terms of Supply for failure to pay undisputed sums of money.

## **6 - Recovery of Sums Due**

If under any Call-off 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 Call-off or any other agreement or contract with the Council.

## **7 - Unauthorised Supply or Provision of Goods**

The Contractor shall neither supply nor provide any Goods without first receiving a Purchase Order for such Goods.

## **8 - Delivery of Goods**

Goods must be properly packed and secured and shall be delivered by the Contractor at the time or times and place or places and in the manner specified in the Framework Contract or, if not so specified, as specified in the Purchase Order. 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.

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.

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.

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.

The Goods shall be packed and marked in a proper manner, with particular Purchase Orders packed and labelled separately, and in accordance with the Council's instructions and any statutory requirements and any requirements of the carriers. The Goods shall be accompanied by a delivery note with the name of the person who placed the Purchase Order, the delivery address, any Purchase Order number (or other reference number if appropriate), the product code and description, the quantity of parcels made up for each Purchase Order and the net, gross and tare weights. Corresponding invoices must also contain this information. The Supplier shall ensure that all packaging is of adequate size and of suitable quality to prevent damage to the Goods and the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

If any of the Goods are not delivered within the time or times specified in the Framework Contract or, where not so specified, in the Purchase Order, the Council may, without prejudice to any other remedies, give notice to the Contractor and terminate the Call-off either in respect of these Goods or in respect of all Goods to which the Call-off relates other than those delivered in accordance with the Call-off before the date of termination.

## **9 - Contractor's Staff**

The Council may, by notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises:

- (a) any member of the staff; or
- (b) any person employed or engaged by any member of the staff, whose admission or continued presence would, in the reasonable opinion of the Council, be undesirable.

At the Council's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission to the Premises in connection with a Call-off, specifying the capacities in which they are concerned with the Call-off and giving such other particulars as the Council may reasonably request.

If the Contractor fails to comply with this Condition within 2 Months of the date of the request and in the reasonable opinion of the Council such failure may be prejudicial to the interests of the Council then the Council may terminate each Call-off, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

The Contractor's staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.

The decision of the Council as to whether any person is to be refused access to the Premises and as to whether the Contractor has failed to comply with the terms of this Condition shall be final and conclusive.

## **10 - Protection of Vulnerable Groups (Scotland) Act 2007**

- 10.1 Where a Call-off 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.
- 10.2 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;
  - 10.2.1 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;
  - 10.2.2 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 Section 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.

- 10.2.3 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;
- 10.2.4 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.

## **11 - Guarantee**

Except where otherwise specified within the terms of the Framework Contract, the Contractor hereby guarantees the Goods for a period no less than that running from the date of delivery to the date 12 Months thereafter against faulty materials or workmanship. If the Council shall within such guarantee period or within 25 working days thereafter give notice to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Council may have) promptly, and in any event within 5 working days, replace the defective Goods free of charge.

Any Goods rejected by the Council under this Condition shall be returned to the Contractor at the Contractor's risk and expense. The Council shall make reasonable efforts to facilitate the collection of the Goods by the Contractor.

## **12 - Warranties and Representations**

The Contractor warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under any Call-off;
- (b) in entering any Call-off it has not committed any fraud or offence under the Bribery Act 2010;
- (c) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under any Call-off;
- (d) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under any Call-off;

- (e) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (f) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under any Call-off;
- (g) in the 3 years prior to the date of any Call-off it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- (h) in the 3 years prior to the date of any Call-off it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
- (i) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfill its obligations under any Call-off; and
- (j) each Call-off is established on these Standard Terms of Supply without amendment thereto save for the necessary information to complete the Call-off and the Purchase Order.

### **13 - Contract Performance.**

The Contractor shall perform its obligations under each Call-off.

- (a) in accordance with the terms of the Framework Contract and each Call-off
- (b) with appropriately experienced, qualified and trained personnel
- (c) in complete and continuous compliance with the obligations relating to Insurance.
- (d) in accordance with Good Industry Practice; and
- (e) in compliance with all applicable Laws.

Further, the Contractor shall ensure that:

- (i) the Goods conform in all respects with the Framework Contract and the Purchase Order and, where applicable, with any sample approved by the Council;
- (ii) the Goods operate in accordance with and correspond with the requirements of the Framework Contract and any particulars specified in the Framework Contract and the Purchase Order;
- (iii) the Goods conform in all respects with all applicable Laws; and
- (iv) the Goods are free from defects in design, materials and workmanship and fit and sufficient for all the purposes for which such Goods are ordinarily used and all the purposes for which such Goods purport to be used.

#### **14 - Monitoring**

The parties shall comply with the monitoring arrangements set out in the Framework Contract and additional requirements of the Purchase Order. Furthermore, the parties shall provide Scotland Excel with all such information as may reasonably be requested and in particular regarding any Call-off, the Contractor's compliance with the service levels stipulated in the Framework Contract and the Purchase Order in respect of the Contractor's performance of its obligations and/or any dispute between the parties.

#### **15 - Failure to Conform**

If the Contractor fails to conform to any terms and conditions of the Call-off, the Council may terminate the Call-off with immediate effect by giving the Contractor notice in writing and may enter into another contract with some other Person. All losses, expenses, costs and charges incurred in this connection shall be a debt due by the original Contractor to the Council and may be deducted from any monies due to the Contractor from the Council or may be recoverable by legal action.

#### **16 - Failure to Meet Specification**

All Goods supplied to the Council must conform to the agreed specification under the Framework Contract or may be rejected by the Council.

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 the Council. Goods rejected under this condition shall be removed by the Contractor at their own expense within seven days (7 days) of the date of receipt of notification of rejection. If the Contractor fails to remove them within this period, the Council shall be entitled to return the rejected Goods or any of them at the Contractors' risk, and recover all costs incurred from the Contractor.

Goods rejected under this condition will not have been delivered under the Call-off and the Contractor shall, within the time for delivery stipulated in the Framework Contract or Purchase Order or such other time as the Council may allow, deliver, at the Contractors' expense, satisfactory Goods in place of those rejected.

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 the Council then the Council may, at its own discretion, determine the Call-off as a whole or only in respect of the Goods which are unsatisfactory.

### **17 - Contractor's Liabilities**

The Contractor agrees to indemnify the Council against death of or bodily injury to any person and loss of or damage to any property belonging to the Council or any third party arising through or in consequence of their operations in supplying and delivering or providing Goods to the Council and as a result of any act of negligence or omission on the part of the Contractor, employees or contractors employed by them.

For the avoidance of doubt, the Contractor's liability is to indemnify the 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 the Council in respect of all claims and in respect of costs and expenses reasonably incurred by the Council in the reinstatement of any property lost or damaged.

### **18 - Return of Goods**

The Council may at any time return any of the Goods where the Goods to be returned are in a re-saleable condition and if the Council has paid the Price, or any part of the Price, the Council shall be entitled to obtain a full refund in respect of the Goods concerned. The Council shall be under no obligation to give any reason for returning any of the Goods.

Any Goods returned by the Council under this Condition shall be returned to the Contractor at the Contractor's risk and expense. The Council shall make reasonable efforts to facilitate the collection of the Goods by the Contractor.

### **19 - Discontinued Goods**

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 Call-off either:

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

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 Framework Contract.

## **20 - Determination of Call-off**

If the Council at any time wishes to determine a Call-off, notice in writing shall be given to the Contractor and twenty eight days (28 days) after delivery of such notice, the Call-off, shall in all respects cease and determine.

The Contractor agrees that upon termination for any reason or expiry of the Contract it shall not be entitled to make a claim against the Council 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.

## **21 - Replacement of Goods Following Determination of a Call-off**

Where the Council has determined a Call-off under the Standard Terms of Supply, without prejudice to any other rights available to it, the Council may replace all or any of the Goods in respect of which the Call-off 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 Call-off.

## **22 - Intellectual Property Rights**

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 the Council shall remain the property of the Council; or
- (b) prepared by or for the Contractor on behalf of the Council for use, or intended use, in relation to the performance by the Contractor of its obligations under any Call-off shall belong to the Council,

and the Contractor shall not, and shall ensure that the staff shall not, (except when necessary for the performance of any Call-off) without prior approval, use or disclose any such Intellectual Property Rights.

The Contractor shall obtain approval before using any material, in relation to the performance of its obligations under any Call-off which is or may be subject to any third party Intellectual property rights.

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 the Council and Scotland Excel harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council or Scotland Excel 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 the Council; or
- (ii) the use of data supplied by the Council which is not required to be verified by the Contractor under any provision of any Call-off.

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 the Council or the Contractor in connection with the performance of its obligations under any Call-off.

### **23 - Health and safety**

Contractors must operate health and safety policies and must perform every Call-off in accordance with all applicable laws relating to health and safety, it being declared for the avoidance of doubt that Condition 1.7 shall not apply to this Condition. If requested by the Council the Contractor shall provide the Council with a copy of its health and safety policy statement.

Scotland Excel and the Council must be notified immediately by the Contractor of any risks to health or safety which are identified or arise during the Call-off including any known misuse of any Goods supplied.

While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Council in respect of the Premises and shall notify the Council 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.

The Council 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 his duties under any Call-off.

### **24 - Equality**

- 24.1 The Contractor hereby confirms that to the best of their knowledge and belief they have complied with 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.
- 24.2 The Contractor agrees to perform its obligations under the Call-off in a non-discriminatory manner and shall promote equality and work reflecting best practice as identified in the codes of practice issued by the Equality and Human Rights Commission.
- 24.3 The contractor recognises that the Council 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 monitoring information to the Council 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 and maternity and
- (ix) race.

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

24.5 The Contractor shall notify the Authority 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 Call-off 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 an 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 the Council with respect to all costs, charges and expenses arising out of or in connection with any such investigation or the Council may have been ordered or required to pay to a third party.

24.6 In recognition of the Council's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies under the Act the Contractor may be subject to the requirement to complete a questionnaire and/or provide

information to the Council'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 the Council but poor practice may result in the Council 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 the Council may take further action, up to and including the termination of the Call-off with the Council.

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

## **25 - Environmental Policy**

The Contractor shall not supply any Goods or products which will endanger the health of any person, will cause significant damage to the environment during manufacture, disposal or use, will consume a disproportionate amount of energy during manufacture, use or disposal, will cause unnecessary waste, or will contain materials derived from threatened species or environments. If requested the Contractor shall provide the Council with a copy of its environmental policy.

## **26- Ethical Requirements**

The Contractor shall perform its obligations under each Call-off in accordance with the Council'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 the Council the Contractor shall provide the Council with a copy of its ethical sourcing policy.

## **27- Public Access to Information**

No term of this contract, whether express or implied, shall preclude the Council from making public, if required under the Freedom of Information (Scotland) Act 2002 (referred to in this Condition as "the Act") or the Environmental Information (Scotland) Regulations 2004 (referred to in this Condition as "the Regulations") or both details of all matters relating to this contract. The Council's interpretation of the Act and any exemptions therein will be final and conclusive. The Contractor will facilitate the Council's compliance with its obligations under the Act and the Regulations and comply with any requests from the Council for that purpose.

Further, the Council may share any information regarding any Call-off or Purchase Order with the Office of Fair Trading or any other relevant government regulators.

## **28 - Prevention of Fraud**

Without prejudice to the terms of Condition 12 above, 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 the Council.

The Contractor shall notify the Council 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 any Call-off or any contract with the Council or Scotland Excel, the Council may:

- (a) terminate the Call-off and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Goods and any additional expenditure incurred by the Council as a result of the Contractor's fraud; or
- (b) recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this condition.

## **29 - Prevention of Corruption**

- 29.1 The Council shall be entitled to cancel any Call-off or Purchase Order 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 Call-off or any other contract with the Council or Scotland Excel or for showing or refraining from showing favour or disfavour to any person in relation to the Call-off or any other contract with the Council or Scotland Excel, or if in relation to any contract with the Council or 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.
- 29.2 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. The Council reserves the right to cancel the Call-off 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 Call-off with the Council.

## **30 - 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.

## **31 - Disruption**

The Contractor shall take reasonable care to ensure that in the performance of its obligations under any Call-off it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.

The Contractor shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under any Call-off.

In the event of industrial action by the staff, the Contractor shall seek approval to its proposals to continue to perform its obligations under each Call-off.

If the Contractor's proposals are considered insufficient or unacceptable by the Council acting reasonably, then any Call-off may be terminated with immediate effect by the Council by notice.

### **32 - Publicity**

The Contractor must not use the Council logo nor disclose any details of any relationship with the Council to any other party without the Council's prior written consent.

### **33 - Company Profile**

The Council may, at any time, give the Contractor seven days (7 days) notice in writing requiring the Contractor to provide to the Council the Contractor's company profile to include a complete list of all companies and organisations affiliated to the Contractor or engaged by the Contractor for the purposes of the Call-off.

### **34 - Change of Legislation**

- 34.1 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 the Council awarded the Contract to the Contractor.
- 34.2 Where such reasonably unforeseeable amendments are necessary, the Council 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.
- 34.3 Where agreement between the Council and the Contractor cannot be achieved under the immediately preceding paragraph the Council reserves the right to resile from any contract in whole or in part.

### **35 - Force Majeure**

Neither party shall be liable to the other party for any delay in performing, or failure to perform, its obligations under any Call-off to the extent that such delay or failure is a result of force majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform its obligations under each Call-off for the duration of such force majeure. However, if such force majeure prevents either party from performing its material obligations under any Call-off for a period in excess of 6 months, either party may terminate the Call-off with immediate effect by notice.

Any failure or delay by the Contractor in performing its obligations under any Call-off 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.

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.

### **36 - Insolvency**

Without prejudice to any other rights, the Council shall have the right to terminate the Call-off by written notice immediately if the Contractor is:-

- (a) 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 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) 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) 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.

### **37 - Assignment, Subcontracting etc.**

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

Notwithstanding the terms of the immediately preceding paragraph the Contractor may assign to another person (an "assignee") (i) the right to receive payment of the price or any part thereof due to the Contractor under this Call-off subject to deduction of sums in respect of which the Council exercises its right of recovery under Clauses 6, 18 and 21 of this Call-off and (ii) all the related rights of the Council under this Call-off 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 handling invoices.

If the Contractor wishes to subcontract, assign or otherwise dispose of the benefit or the burden of the Call-off or any part thereof, the Contractor shall intimate to the Council 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 the Council may need to consider the Contractor's request.

No change in the Control of the Contractor shall take place without the prior written consent of the Council.

### **38 - Serving of Notices**

Any notice or other communication to be given from one party to the other under these Standard Terms of Supply 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 or to Scotland Excel shall be given by letter (sent by hand, post or by the signed for or special delivery service), or by facsimile transmission or electronic mail. Such letters shall be addressed to the other party or to Scotland Excel in the following manner -

- (a) For the Contractor – [to be completed]
- (b) For the Council – to the address set out in the Purchase Order
- (c) 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 other party or Scotland Excel acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

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

The Council or Scotland Excel may change its address for service by sending a notice in accordance with this condition.

### **39 - Audit**

The Contractor shall keep and maintain until 5 years after the date of acceptance of the Goods, or as long a period as may be agreed between the parties, full and accurate records of each Call-off including the Goods supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request afford the Council or the Council's representatives such access to those records as may be requested by the Council in connection with any Call-off.

#### **40 - Waiver**

No failure or delay by the Council to enforce any right or remedy to which the Council is entitled, or to require performance by the Contractor of the Call-off shall be a waiver of any such right or remedy nor shall it in any way affect the right of the Council subsequently to enforce such provisions.

#### **41 - Severability of Conditions**

If any provision of a Call-off to any extent becomes, or is held to be, invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of the Call-off shall not in any way be affected.

#### **42 - Remedies Cumulative**

Except as otherwise expressly provided by these Standard Terms of Supply, all remedies available to either party for breach of any Call-off 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.

#### **43 - Conflict**

In the event of, and only to the extent of, any conflict between the Conditions of the Framework Contract, these Standard Terms of Supply, the Purchase Order and/or any document referred to in these Standard Terms of Supply, the conflict shall be resolved in accordance with the following order of precedence.

- (a) the Conditions of the Framework Contract;
- (b) these Standard Terms of Supply;
- (c) the Purchase Order; and
- (d) any other document referred to in these Standard Terms of Supply.

#### **44 - Headings**

Headings to these Standard Terms of Supply are for convenience only and shall not affect their interpretation.

#### **45 - Dispute Resolution**

The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with any Call-off within 20 working days of either party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each party.

In the event that the parties are unable to negotiate a settlement, all disputes, differences or questions which arise between the Council and the Contractor relating to the Call-off or any matter arising under or out of the Call-off, other than any matter or thing that, in terms of the Call-off, the decision of the Council 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 Sherriffdom in whose jurisdiction the area administered by the Council sits. The decision of the said Sheriff Principal shall be final, binding and conclusive.

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.

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.

#### **46 - Law of Scotland**

The Standard Terms of Supply and each Call-off will be governed by the Law of Scotland and subject to the exclusive jurisdiction of the Scottish Courts.