

**The City of Edinburgh Council**

**Terms and Conditions (Goods and Services, including Consultancy)**

**THE CITY OF EDINBURGH COUNCIL’S**

**CONDITIONS FOR GOODS AND SERVICES**

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

1. **DEFINITIONS AND INTERPRETATION**

In these conditions:

***‘Applicable Laws’*** meansany applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body, all as amended or re-enacted from time to time.

***['Assigned Rights***' has the meaning given at Condition 18.2.]

***‘Commencement Date’*** has the meaning given in the Contract Acceptance Letter;

***‘Conduct Legislation’*** means the (i) Bribery Act 2010; (ii) Employment Relations 1999 Act (Blacklists) Regulations 2010 or Section 13 of the Trade Union and Labour Relations (Consolidation) Act 1992; (iii) Modern Slavery Act 2015; (iv) the Human Trafficking and Exploitation (Scotland) Act 2015; (v) the Equality Act 2010; and (vi) any other legislation of laws referred to in Regulation 58(1) of the Public Contracts (Scotland) Regulations 2015;

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

***'Contract'*** means the contract between the Council and the Provider consisting of (i) the ITT, (which includes these Terms and Conditions and the Specification); (ii) the Provider’s tender (including the Pricing Schedule and any clarifications to the P**r**ovider’s tender); (iii) the Contract Acceptance Letter; (iv) any Purchase Order; and (v) any document referred to in the in the ITT or any other tender documentation from the Council, the Provider's Tender or the Contract Acceptance Letter;

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

***'Personal Data'*** has the meaning given in the Data Protection Legislation;

***'Council'***means the City of Edinburgh Council, a local authority constituted under the Local Government etc (Scotland) Act 1994 and having its principal office at Waverley Court, 4 East Market Street, Edinburgh EH8 8BG;

***'Council's Policies'*** means any of the Council's policies that have been identified in the ITT or otherwise notified to the Service Provider.

***'Data Protection Legislation'***means(i)to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data; and (ii) to the extent the General Data Protection Regulation (Regulation (EU) 2016/679) applies, the law of the European Union or any member state of the European Union to which the Provider is subject, which relates to the protection of Personal Data;

***'Default Notice'***has the meaning ascribed in Condition 7.3;

'***Force Majeure Event'*** means any cause affecting the performance by a party of its obligations under the Contract arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake, pandemic or epidemic and any disaster, but excludingany consequences of the UK leaving the European Union, any industrial dispute relating to the Provider, the Provider's Personnel or any other failure in the Provider's supply chain;

***‘Good Industry Practice’*** means standards, practices, methods and procedures conforming to legal and regulatory requirements 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 as the Provider under the same or similar circumstances.

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

***"Insolvency Event"*** means:-

1. where the Provider is an individual, if a petition is presented for the Provider's bankruptcy or the sequestration of the Provider’s estate or a criminal bankruptcy order is made against the Provider, or the Provider is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage the Provider’s affairs; or
2. where the Provider is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Provider to be wound up as an unregistered company; or
3. where the Provider is a company, if the company passes a resolution for winding‑up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding‑up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge or it makes any application for, or becomes subject to, a moratorium under Part 1A of the Insolvency Act 1986; or is stuck off or dissolved or otherwise ceased to maintain its corporate existence.

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

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

***'Joint Controllers****'* where two or more Controllers jointly determine the purposes and means of processing;

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

***'Price'***means the price for Goods and/or charges for Services as specified in the relevant Purchase Order or Contract Acceptance Letter or the Pricing Schedule;

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

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

***‘Provider's Personnel’*** means all persons engaged by the Provider in the performance of its obligations under the Contract including (i) its employees and workers (including persons employed by a third party but working for and under the control of the Provider); (ii) its agents, suppliers and carriers; and (iii) any sub-contractors of the Provider (whether approved under Condition 26 (Assignation and sub-contracting) or otherwise);

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

***‘Purchase Order’*** means the order for Goods or Services to be provided under the Contract;

***‘Purchase Order Number’*** means the unique number allocated by the Council to the Purchase Order;

***‘Regulated Work’*** in relation to children has the meaning as set out in Part 1 of Schedule 2 to the Protection of Vulnerable Groups (Scotland) Act 2007 and in relation to vulnerable adults has the meaning as set out in Part 1 of Schedule 3 to the Protection of Vulnerable Groups (Scotland) Act 2007;

***‘******Remediation Notice’*** means a notice served by the Council in accordance with Condition 24.1;

***‘Schedules’*** means the schedules annexed to and forming part of these Terms and Conditions;

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

***‘Specification’***means the document setting out the Council's requirements for Goods and/or the delivery of the Services;

***‘Staff Vetting Procedure’*** means the Council's procedures and policies for the vetting of personnel including (without limitation) procedures and policies applicable to those personnel whose role will involve Regulated Work or the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures;

***‘Substantial Modification’*** means a substantial modification as defined in regulation 72 of the Public Contracts (Scotland) Regulations 2015;

***‘Term’*** means the term of the Contract specified in the Contract Acceptance Letter;

***‘****Terms and Conditions****’*** means these terms and conditions including the Schedules;

***'UK GDPR'*** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;

***‘Valid Invoice’*** means a properly constituted invoice on the Provider's headed paper or as otherwise required by the Council (which may include e-invoicing provided such electronic invoice meets all the requirements set out in Regulation 70A of the Public Contracts (Scotland) Regulations 2015) addressed to the City of Edinburgh Council, containing the Purchase Order Number and where the Provider is registered for VAT and the supply is not exempt from VAT a VAT registration number and full breakdown of costs net Vat and gross; and

***‘Working Day’*** means any day other than a Saturday or Sunday on which the Scottish clearing banks are open for business.

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

(a) the Contract Acceptance Letter; then

(b) the Terms and Conditions; then

(c) the Specification; then

(d) the Pricing Schedule; then

(e) Purchase Orders; then

(f) the ITT (excluding the documents referred to at (a) to (e) above; then

(g) any clarification to the Provider's tender; then

(h) the Provider's tender.

The Schedules to the Terms and Conditions form part of the Terms and Conditions and shall have effect as if set out in full in the body of these Terms and Conditions and any reference to the Terms and Conditions and the Contract includes the Schedules.

1. **CONDITIONS PRECEDENT, COMMENCEMENT & DURATION**
	1. The rights and obligations of the parties under the Contract will be of no force and effect until all of the items specified in the Contract Acceptance Letter (for delivery prior to Contract commencement) have been delivered in a form satisfactory to the Council. If these items are not delivered within 28 days of the date of the Contract Acceptance Letter the Council may terminate the Contract.
	2. The Contract shall commence on the Commencement Date and shall (unless otherwise terminated) continue for the Term, subject to the Council exercising any periods of extension specified in the Contract Acceptance Letter, by 1 months' written notice to the Provider prior to the expiry of the Contract.
2. **CHANGE TO CONTRACT REQUIREMENTS**
	1. The Council may order any variation to any part of the Services or quantity or specification of the Goods that for any reason shall in the Council’s opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Goods or Services and changes in quality, form, character, kind, timing, method or sequence of the delivery of Goods or provision of Services.
	2. Except as permitted by the Terms and Conditions, no variation of the Contract as provided for in Condition 3.1 shall be valid unless given or confirmed in the form of an order given by the Council. All such orders shall be given in writing provided that if for any reason the Council shall find it necessary to give any such order orally in the first instance the Provider shall comply with such oral order which must be confirmed in writing by the Council within 2 Working Days of the giving of such oral order by the Council, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 Working Day period.
	3. Where any such variation of the Contract made in accordance with Condition 3.1 and 3.2 has affected or may affect the costs incurred by the Provider in delivering the Goods or providing the Services, the Provider will notify the Council in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Council, who shall take all of the facts into account (including such information as may be provided by the Provider in respect of the effect which such variation has had or may have on the costs incurred by the Provider in delivering the Goods or providing the Services) and may authorise such alteration to the sums to be paid to the Provider in accordance with the provisions of the Contract as are, in the Council’s opinion, appropriate and reasonable in the circumstances.
3. **PROVIDER'S WARRANTIES AND STATUS**

* 1. The Provider warrants and represents to the Council that (ii) it has full capacity to perform the obligations under the Contract; (ii) has not suffered an Insolvency Event; (iii) there are no actual or potential conflicts of interest between the Provider and the duties owed to the Council under the Contract which have not been disclosed to and accepted by the Council; (iii) it has not committed an offence under, or if any investigations or proceedings have been launched under any of the Conduct Legislation or unlawfully processed Personal Data in connection with any blacklisting activities; (iv) it does not, and/or its associated companies of which it is part do not, have any economic interest in illegally occupied territories as defined by international law, and does not benefit financially from any other act by itself, a state or any third party that is in breach of international law. If any of these warranties become untrue or misleading during the Term, the Provider shall promptly notify the Council in writing.
	2. In carrying out the Services the Provider shall be acting as principal and not as the agent of the Council. Accordingly:
1. the Provider shall not say or do anything that might lead any other person to believe that the Provider is acting as the agent of the Council, and
2. nothing in the Contract shall impose any liability on the Council in respect of any liability incurred by the Provider to any other person but this shall not be taken to exclude or limit any liability of the Council to the Provider that may arise by virtue of either a breach of the Contract or any negligence on the part of the Council, or the Council’s staff or agents.
3. **PROVIDER'S PERSONNEL**
	1. The Provider shall make available for the purposes of fulfilling the Contract any individuals named on the Provider's tender as key personnel. The Provider shall provide the Council with a list of the names and work addresses of all others regarded by the Provider as key personnel and, if and when instructed by the Council, all other persons who may at any time be concerned with performance of the Contract or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require.
	2. The Council may at any time by notice to the Provider designate any person concerned with the Services or any part of it as a key person. The Provider shall not without the prior written approval of the Council make any changes in the key personnel referred to in this Condition.
	3. The Provider shall take the steps reasonably required by the Council to prevent unauthorised persons being admitted to the Premises. If the Council gives the Provider notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Provider shall take all reasonable steps to comply with such notice.
	4. The decision of the Council shall be final and conclusive as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract or as to the designation or approval of key personnel and as to whether the Provider has furnished the information or taken the steps required of the Provider by this Condition.
	5. The Provider shall bear the cost of any notice, instruction or decision of the Council under this Condition.
4. **STAFF VETTING**
	1. The Provider shall comply with the Staff Vetting Procedure.
	2. The parties acknowledge that the Provider is the organisation with ultimate responsibility for the management and control of any Regulated Work provided under the Contract and for the purposes of the Protection of Vulnerable Groups (Scotland) Act 2007.
	3. In addition to the requirements of Condition 6.1, and if the Services include any Regulated Work, the Provider shall ensure that all individuals engaged in the provision of the Services are:
		1. subject to a valid protecting vulnerable groups check undertaken through Disclosure Scotland including a check against the adults' barred list or the children's barred list, as appropriate; and
		2. the Provider shall continually monitor the level and validity of the checks under this Condition 6 for each member of staff to ensure that they remain appropriate, valid and up to date throughout the term of the Contract.
	4. The Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Work or who may otherwise present a risk to users of the Services and the Provider warrants that at all times for the purposes of the Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Protection of Vulnerable Groups (Scotland) Act 2007 and any regulations made thereunder.
	5. The Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this Condition 6 have been met.
	6. The Provider shall make all necessary referrals about any person carrying out the Services to the Scottish Ministers in accordance with the provisions of the Protection of Vulnerable Groups (Scotland) Act 2007.

**6A. RIGHT TO WORK**

6A.1 The parties acknowledge that the Service Provider is the organisation with ultimate responsibility for establishing that all individuals engaged in the provision of Services are legally entitled to do so for the purposes of the Immigration, Asylum and Nationality Act 2006 (**2006 Act**).

6A.2 The Service Provider shall ensure that all individuals engaged in the provision of the Services are subject to a valid Right to Work check as required by the 2006 Act and associated Home Office guidance; and the Service Provider shall continually monitor the validity of the checks under this Condition 6A for each member of staff to ensure that they remain appropriate, valid and up to date throughout the Term.

6A.3 The Service Provider warrants that at all times for the purposes of the Contract it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is not legally entitled to carry out the activity.

6A.4 The Service Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this Condition 24 have been met.

1. **PERFORMANCE OF THE CONTRACT, KPIs AND ACCESS TO PREMISES**
	1. The Provider shall perform the Contract in accordance with (i) Good Industry Practice; (ii) all Applicable Laws and necessary consents; (iii) the Council's Policies; (iv) to the reasonable satisfaction of the Council; (v) with the reasonable skill care and diligence (vi) in accordance with the provisions of the Contract (including, without limitation, the Specification).
	2. Where any Service or Goods are stated in the Specification or otherwise to be subject to a specific service level or key performance indicators (together referred to as KPIs), the Provider shall provide those Goods and Services in such a manner as will ensure that it complies with those KPIs, failing which, the Provider shall pay the Council such service credits or other credits as may be specified in the Specification or elsewhere in the tender documentation.
	3. In the event that the Provider does not comply with the provisions of Condition 7.1 or 7.2 in any way, the Council may serve the Provider with a notice in writing setting out the details of the Provider’s default (a Default Notice).
	4. Where any access to the Premises is necessary in connection with any performance, delivery or installation (including delivery and installation of Goods) the Provider and the Provider’s sub‑contractors shall at all times comply with the reasonable requirements of the Council.
	5. Access to the Premises shall not be exclusive to the Provider but only such as shall enable the Provider to perform the Contract concurrently with the execution of work by others. The Provider shall co-operate with such others as the Council may reasonably require.
	6. Any of the Provider's property brought onto the Council's Premises must be in a safe and clean condition and is done so at the Provider's own risk and the Council has no liability for any loss of or damage to any such property unless the damage was caused by the Council or those for whom the Council is responsible.
	7. Any access to Premises and any labour and equipment that may be provided by the Council in connection with performance of the Contract shall be provided without acceptance by the Council of any liability whatsoever and the Provider shall indemnify the Council in respect of any actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of performance to the extent that any such damage or injury is attributable to any act or omission of the Provider or any of the Provider’s sub‑contractors.
	8. On completion of any Services or delivery and installation of any Goods or at such other times as required by the Council (and in any event at termination of the Contract), the Provider shall remove the Provider’s plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Goods or Services and leave the Premises in a neat and tidy condition.
2. **INSPECTION OF PREMISES AND NATURE OF SERVICES**
	1. The Provider is deemed to have inspected the Premises (if specified) before tendering so as to have understood the nature and extent of the Services to be carried out and Goods to be delivered and is deemed to be satisfied in relation to all matters connected with the Services, Goods and Premises.
	2. Unless otherwise specified, the Provider shall provide all plant, tools, material, labour, haulage and any other things necessary to complete the Contract.
3. **MANNER OF CARRYING OUT THE SERVICES**

In relation to the performance of any Services:-

* 1. the Provider shall begin performing the Services on the date stated in the Specification and shall complete the Services by the date stated in the Specification or continue to perform them for the period stated in the Specification (whichever is applicable). Time of performance of the Services shall be of the essence and failure to perform the Services within the time promised or specified shall enable the Council (at the Council’s option) to be released from any obligation to accept and pay for the Services and/or to cancel all or part of the Contract therefor, in either case without prejudice to the Council’s other rights and remedies. The Council may by written notice require the Provider to execute the Services in such order as the Council may decide. In the absence of such notice the Provider shall submit such detailed programmes of work and progress reports as the Council may from time to time require.
	2. the Provider shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Council's prior consent.
	3. the Council shall have the power at any time during the term of the Contract to order in writing:
1. the removal from the Premises of any materials which in the opinion of the Council are either hazardous, noxious or not in accordance with the Contract, and/or
2. the substitution of proper and suitable materials, and/or
3. the removal and proper re‑execution notwithstanding any previous test thereof or interim payment therefor of any work which, in respect of material or workmanship is not in the opinion of the Council in accordance with the Contract.

* 1. the Provider shall forthwith comply with any order made under Condition 9.3.
	2. the Provider shall, if required to do so by the Council, prepare and submit to the Council a draft of any report or other deliverable prior to delivering the report or other deliverable in final form.  Where the Council reasonably requests any amendments to the draft report or other deliverable the Provider shall incorporate those amendments into the final report or other deliverable.
1. **GOODS**

In relation to any Goods:-

* 1. the Provider shall produce the Goods to the reasonable satisfaction of the Council and warrants that the Goods shall:
1. conform in all respects with any particulars specified in the Contract and in any variations thereto;
2. conform in all respects with the requirements of any Applicable Laws; and
3. be fit and sufficient for the purpose for which such Goods are ordinarily used and for any particular purpose made known to the Provider by the Council and the Council relies on the skill and judgement of the Provider in the supply of the Goods and the execution of the Contract.
4. **DELIVERY AND INSPECTION**
	1. The Goods shall be delivered to the place named in the Contract. The time of delivery of the Goods shall be of the essence and failure to deliver within the time promised or specified shall enable the Council (at the Council’s option) to be released from any obligation to accept and pay for the Goods and/or to cancel all or part of the Contract therefor, in either case without prejudice to the Council’s other rights and remedies.
	2. Property and risk in the Goods shall without prejudice to any of the rights or remedies of the Council (including without limitation the Council's rights and remedies under this Condition 11) pass to the Council at the time of delivery.
	3. On dispatch of any consignment of the Goods the Provider shall send to the Council at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the expected date of delivery, the number of packages and their weight and volume. The Provider shall free of charge and as quickly as possible either repair or replace (as the Council shall elect) such of the Goods as may either be damaged or have failed to be delivered to the Council provided that:
5. in the case of damage to such Goods the Council shall within 30 days of delivery give notice to the Provider that the Goods have been damaged;
6. in the case of non‑delivery the Council shall (provided that the Council has been advised of the dispatch of the Goods) within 10 days of the notified date of delivery give notice to the Provider that the Goods have not been delivered.
	1. The Provider shall permit the Council or the Council’s authorised representatives to make any inspections or tests of the Goods that the Council may reasonably require and the Provider shall afford all reasonable facilities and assistance free of charge at the Provider’s or Council’s premises. No failure to make a complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Council of any rights or remedies in respect of the Goods.
	2. The Council may by written notice to the Provider reject any of the Goods which fail to meet the requirements specified in the Contract. Such notice shall be given within a reasonable time after delivery to the Council of the Goods concerned. If the Council shall reject any of the Goods pursuant to this Condition the Council shall be entitled (without prejudice to its other rights and remedies) either:
7. to have the Goods concerned as quickly as possible either repaired by the Provider or (as the Council shall elect) replaced by the Provider with Goods which comply in all respects with the Contract; or
8. to obtain a refund from the Provider in respect of the Goods concerned.
	1. The guarantee period applicable to the Goods shall be 12 months from the putting into service or 18 months from delivery of the Goods, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Council and the Provider). If the Council shall within such guarantee period or within 30 days thereafter give notice in writing to the Provider of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Provider shall (without prejudice to any other rights and remedies which the Council may have) as quickly as possible remedy such defects (whether by repair or replacement as the Council shall elect) without cost to the Council.
	2. Any Goods rejected or returned by the Council as described in Conditions 11.3 or 11.5 shall be returned to the Provider at the Provider's risk and expense.
	3. The Goods shall be packed and marked in a proper manner and in accordance with the Council's instructions and any statutory requirements and any requirements of the carriers. In addition, the Goods shall be marked with the Purchase Order Number (if any), the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Provider shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this Condition.
	4. All packaging materials will be considered non‑returnable and will be destroyed unless the Provider's advice note states that such materials will be charged for unless returned. The Council accepts no liability in respect of the non‑arrival at the Provider's premises of empty packages returned by the Council unless the Provider shall within ten days of receiving notice from the Council that the packages have been dispatched notify the Council of such non‑arrival.
	5. The Provider represents and warrants that the maximum use has been made of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packing, where these fulfil other packing specifications.
9. **COMMUNITY BENEFITS**
	1. In the production and provision of the Goods and Services, the Provider shall ensure that it delivers the community benefits as set out in the Provider’s tender.
	2. The Provider shall provide such information as may be required in the reasonable opinion of the Council to demonstrate the delivery of the community benefits referred to in Condition 12.1 above.

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

1. **HEALTH AND SAFETY**

* 1. The Provider shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the contract is being performed (whether such persons are in the vicinity of the said place at the time of the performance or otherwise) and in such a manner as to comply with any relevant health and safety or other Applicable Laws, whether specifically or generally.
	2. The Provider represents and warrants to the Council that the Provider is satisfied that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that the Provider has made available to the Council adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health.
	3. The Provider shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of Conditions 13.1 and/or 13.2.
1. **PRICE AND PAYMENT**
	1. The price of the Goods and Services shall be as stated in the Contract and no increase will be accepted by the Council.
	2. For Services, unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of Valid Invoices, submitted monthly in arrears, for work completed to the satisfaction of the Council.
	3. For Goods, the Provider shall render a separate Valid Invoice in respect of each consignment delivered under the Contract unless the Council has specified a requirement for consolidated billing. Payment shall be due 30 days after receipt of the Goods or the correct Valid Invoice therefor, whichever is the later.
	4. Where any invoice submitted is not a Valid Invoice payment in accordance with the terms and conditions of the Contract may be delayed.
	5. Subject to Condition 14.4, interest shall be payable on the late payment of any undisputed charges properly invoiced under the Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Provider shall not suspend the supply of the Services if any payment is overdue.
	6. Notwithstanding Condition 26 the Provider may assign to another person (an "assignee") the right to receive payment of the Price or any part thereof due to the Provider under the Contract subject to (i) deduction of sums in respect of which the Council exercises its right of recovery under Condition 25 (ii) all the related rights of the Council under the Contract in relation to the recovery of sums due but unpaid. The Provider shall notify or procure that any assignee notifies the Council of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Council to redirect payments or invoices accordingly.
	7. Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
2. **AUDIT**

The Provider shall keep and maintain until 5 years after the Contract has been completed records to the satisfaction of the Council of all expenditures which are reimbursable by the Council and of the hours worked and costs incurred in connection with any employees of the Provider paid for by the Council on a time charge basis. The Provider shall on request afford the Council or the Council’s representatives such access to those records as may be required by the Council in connection with the Contract.

1. **FREE-ISSUE MATERIALS**

Where the Council for the purpose of the Contract issues materials free of charge to the Provider such materials shall be and remain the property of the Council. The Provider shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Provider shall notify the Council of any surplus materials remaining after completion of the Services and shall dispose of them as the Council may direct. Waste of such materials arising from bad workmanship or negligence of the Provider or any of the Provider’s servants, agents or sub‑ contractors shall be made good at the Provider's expense. Without prejudice to any other of the rights of the Council, the Provider shall deliver up such materials whether processed or not to the Council on demand.

1. **PREVENTION OF CORRUPTION**
	1. The Provider shall not offer or give, or agree to give, to any employee or representative of the Council 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 act in relation to the obtaining or execution of this or any other contract with the Council or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract.
	2. The Provider shall comply with all the requirements of the Bribery Act 2010 and any form of guidance issued in respect of the Bribery Act 2010 and the Council’s Anti-Bribery Policy. The Council reserves the right to cancel or terminate the Contract without incurring any penalty whatsoever and to recover from the Provider the amount of loss resulting from such cancellation or termination if the Provider or his representative (whether with or without the knowledge of the Provider) shall have acted in a manner contrary to the requirements under the Bribery Act 2010 and/or the Council’s Anti-Bribery Policy in respect of any direct or indirect business carried out for the purposes of the Contract with the Council.

**17A. PREVENT DUTY**

## 17A.1 For the purposes of this clause 17A, the following terms shall have the meanings set out below:

‘**Prevent Duty**’ means the Council’s duty under s26 of the Counter-Terrorism and Security Act 2015 and the Revised Prevent Duty Guidance: For Scotland (2015) to have due regard to the need to prevent people from being drawn into terrorism; and

‘**Prevent Lead**’ means a named individual from the Service Provider who has authority and responsibility for providing advice, support and training to the Service Provider and the Service Provider’s Personnel on the Prevent Duty and who acts as the Service Provider’s main point of contact with the Council in relation to the Prevent Duty and its relationship to any matter arising from the Service,

## 17A.2 The Service Provider:

1. shall at all times have due regard to the Council’s statutory obligations in relation to the Prevent Duty under the Revised Prevent Duty Guidance: For Scotland (2015) issued in accordance with section 29 of the Counter-Terrorism and Security Act 2015 and updated on 31 December 2023 or any future revised Guidance and provide the Council with such information and assistance as it may reasonably require to satisfy those obligations and, but only where so requested by the Council:
	* + 1. nominate or appoint a Prevent Lead;
			2. procure timely and sufficient training for the Prevent Lead and the Service Provider’s Personnel on the Prevent Duty;
			3. submit to the Council for approval and thereafter implement a policy on the Prevent Duty, including but not limited to a procedure for raising concerns, sanctions and the maintenance of records; and
			4. disclose to the Council on request copies of such records and any other information the Council may reasonably require from the Service Provider in the discharge of the Prevent Duty;
2. shall and shall procure that any Service Provider Party and all Service Provider Personnel shall in connection with the Contract, partner with the Council to prevent people from being drawn into terrorism;
3. warrants, represents and undertakes that it (including its Service Provider Party and all Service Provider Personnel) is not associated with any extremist and/or terrorist organisation within or outside the United Kingdom.

## 17A.3 The Service Provider shall:

### if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Counter-Terrorism and Security Act 2015 and any regulation or Guidance made thereunder or as may be amended or revised from time to time;

### within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an authorised officer of the Service Provider) compliance with this clause 17A by the Service Provider and all persons associated with it or other persons who are supplying goods or services in connection with the Contract. The Service Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

## 17A.3 If any breach of clause 17A.2 is suspected or known, the Service Provider shall notify the Council immediately.

## 17A.5 If the Service Provider notifies the Council that it suspects or knows that there may be a breach of clause17A.2, the Service Provider shall respond promptly to the Council's or the Council’s Prevent Duty partner/agency enquiries, co-operate with any investigation, and allow the Council to audit records and any other relevant documentation. This obligation shall continue for five years following the expiry or termination of the Contract.

17A.6 The Council may deem breach of this clause 17A as a material breach in terms of clause 24.1(b).

1. **INTELLECTUAL PROPERTY**
	1. As between the parties, each party is and shall remain the sole and exclusive owner of all right, title and interest in its own pre-existing Intellectual Property.
	2. [The Provider grants to the Council a perpetual, irrevocable, worldwide, fully paid up, non-exclusive, royalty free licence (with the right to sub-licence) to all Intellectual Property owned by or licensed to the Provider to the extent necessary or desirable for the Council's receipt of the Goods and use of the Services.]

**OR**

* 1. [In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Provider or any employee, agent or subcontractor of the Provider:
1. in the course of performing the Services;
2. exclusively for the purpose of performing the Services; or
3. in any deliverables set out in the Specification including but not limited to reports, software, materials, data, drawings, models and designs

(the "**Assigned Rights**") shall vest in the Council on creation.

* 1. The Provider hereby assigns to the Council, including by way of present assignation of future rights, absolutely all right title and interest in and to the Assigned Rights, including the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of the Assigned Rights whether occurring before, on, or after the date of the Contract.
	2. The Provider hereby grants to the Council a perpetual, irrevocable, transferable, worldwide, sub-licensable, royalty free licence to all Intellectual Property owned by or licensed to the Provider to the extent necessary or desirable for the use and exploitation of the Assigned Rights.]
	3. The Provider shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property by the availability of the Services or omissions or by the use of the Intellectual Property referred to in this Condition 18, except to the extent that they have been caused by or contributed to by the Council's acts.
	4. The Provider shall do all such acts as the Council requires to give the Council the benefit of this Condition 18.
1. **CYBER-SECURITY**

If cyber security requirements apply to the Contract then the Provider shall comply with the provisions of Schedule 3 (Cyber Security Requirements) and this Condition 19 shall not apply where the Contract does not include a Schedule 3 (Cyber Security Requirements).

1. **INDEMNITY, INSURANCE AND LIABILITY**
	1. Without prejudice to any rights or remedies of the Council the Provider shall indemnify the Council against all actions, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the Provider.
	2. Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Provider (in respect of which the indemnity in Condition 20.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Council) the indemnity contained in Condition 20.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Council.
	3. For the Term and for five years thereafter the Provider shall have in force and shall require any sub-contractor to have in force with an insurance company or companies acceptable to the Council and with a scope of cover and level of uninsured excess acceptable to the Council:
2. employer's liability insurance in accordance with any legal requirements for the time being in force, and
3. public liability insurance for such sum and range of cover as the Provider deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Terms and Conditions in the sum of not less than £5 million for any one incident and unlimited in total, unless otherwise agreed by the Council in writing; and
4. such additional insurance and such other insurance as may be required by the Council as part of the Specification.
	1. The policy or policies of insurance referred to in Condition 20.3 shall be shown to the Council whenever the Council requests, together with satisfactory evidence of payment of premiums, including the latest premium due.
	2. Subject to Conditions 20.8 and 20.9, neither party shall be liable to the other party (as far as permitted by law) for indirect, special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
	3. Subject to Condition 20.8, the Council's total aggregate liability in respect of all claims, losses or damages, whether arising from delict (including without limitation negligence), breach of contract or otherwise under or in connection with the Contract (other than a failure to pay any of the Price that is properly due and payable and for which the Council shall remain fully liable), shall in no event exceed £250,000 in each calendar year or, if lower, 50% of the aggregate Price paid under or pursuant to the Contract in the calendar year in respect of which the claim arises.
	4. Subject to Condition 20.8, the Provider's total aggregate liability:
		1. in respect of Conditions 7.7, 11.8, 20.10, 21.3, 13.3,18.6 and clause 2.12 of Schedule 1 is unlimited;
		2. for all loss, destruction, corruption, degradation, inaccuracy or damage to data (excluding Personal Data as defined in Schedule 1) caused by the Provider’s default or breach of the Contract shall be £1,000,000 in any calendar year;
		3. for all loss of or damage to the Council’s premises, property or assets (including technical infrastructure, assets or equipment but excluding any loss or damage to the Council’s data or any other data) of the Council caused by the Provider’s default or breach of the Contract shall in no event exceed £10,000,000 in any calendar year; and
		4. in respect of all other claims, losses or damages, whether arising from delict (including negligence), breach of contract or otherwise under or in connection with the Contract, shall in no event exceed £5,000,000 in each calendar year or, if greater, 200% of the aggregate Price paid under or pursuant to the Contract in the calendar year in respect of which the claim arises.
	5. Notwithstanding any other provision of the Contract neither party limits or excludes its liability for:
5. fraud or fraudulent misrepresentation;
6. death or personal injury caused by its negligence;
7. breach of any obligation as to title implied by statute; or
8. any other act or omission, liability for which may not be limited under any Applicable Laws.
	1. Subject to the financial limits of liability contained in Condition 20.7, the Council may, amongst other things, recover as a direct loss:
9. any additional operational and/or administrative costs and expenses arising from the Provider’s default or breach of the Contract;
10. any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Provider’s default or breach of the Contract; and
11. the additional cost incurred by the Council of procuring replacement Goods or Services for the remainder of the term of the Contract.
	1. The Provider (if an individual) represents that the Provider is regarded by both Her Majesty’s Revenue and Customs and the Department for Work and Pensions as self‑employed and accordingly shall indemnify the Council against any tax, national insurance contributions or similar impost for which the Council may be liable in respect of the Provider by reason of the Contract.

* 1. In providing the services, the Provider will ensure that the correct amount of tax and National Insurance contributions are paid and/or deducted in respect of workers engaged via the Contract and the Provider will comply and procure compliance with all applicable requirements relating to tax and National Insurance, including without limitation, those relating to intermediaries (including those known as "IR35"), and any other legislation in force from time to time relating to any payments made to such workers. The Provider will upon request specifically advise the Council of compliance in this regard.
1. **EQUAL OPPORTUNITIES/ DISCRlMlNATlON / HUMAN RIGHTS**
	1. In performing the Contract, the Provider shall (i) undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998; (ii) have in place and comply with suitable equalities and diversity policies; (iii) comply with the Equality Act 2010, all equal opportunities obligations and the Public Sector Equality Duty and ensure compliance with the Council’s written policies on such matters and have regard to any guidance provided by Scottish Ministers for local authorities on the Public Sector Equality Duty which is applicable from time to time; and (iv) prepare, or assist in the preparation of, reports in order to secure the Council’s compliance with the Public Sector Equality Duty.
	2. The Provider shall provide such information and documentation to the Council as the Council may reasonably require from time to time for the purposes of:
		1. assessing the Provider’s compliance with its obligations under this Condition;
		2. enabling the Council to review diversity in employment and use of Services data and to comply with its Public Sector Equality Duty including where the Council undertakes an equalities impact assessment; and
		3. enabling the Council to review data in respect of complaints and satisfaction surveys in respect of the Provider’s approach to equalities, diversity and human rights; and
		4. enabling the Council to prepare reports in order to secure the Council’s compliance with the Public Sector Equality Duty.
	3. The Provider shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Provider under the Equality Act 2010. Where any investigation is undertaken (whether against the Provider or the Council) by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Provider’s performance of the Contract being in contravention of the Equality Act 2010, the Provider shall free of charge 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 Equality Act 2010, which arise directly or indirectly out of any act or omission of the Provider, its agents or sub-contractors, or the staff of the Provider, and where there is a finding against the Provider in such investigation or proceedings, the Provider shall indemnify the Council with respect to all costs, charges and expenses arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party.

Poor practice in this regard may be regarded as a material breach of the Contract.

* 1. In the event that the Provider enters into any subcontract in connection with the Contract, it shall impose obligations on its sub-contractors in proportionate and relevant terms substantially similar to those imposed on it pursuant to this Condition.
1. **CONFIDENTIALITY AND FREEDOM OF INFORMATION**
	1. Subject always to the terms of the Freedom of Information (Scotland) Act 2002 (FOISA), the Provider shall not and shall ensure that it and its employees do not without the written consent of the Council during the period of the Contract or at any time thereafter divulge to any third party any information which comes into its or their possession in the course of providing the Services.
	2. The Council is committed to meeting its responsibilities under FOISA. Accordingly, all information submitted to the Council may require to be disclosed or published by the Council. If the Provider considers that specific information provided to the Council is potentially exempt from disclosure under FOISA (where for example it is considered commercially confidential) the Provider should identify exactly which information it considers to be exempt, state the period of sensitivity and provide justification for its assertions (for example identify what harm may result from disclosure). The Provider should note that the Council is not bound by the Provider’s view and may in its absolute discretion disclose and / or publish any such information in order to comply with FOISA.

1. **DATA PROTECTION**

* 1. Each party warrants to the other that it shall comply with all the requirements of the Data Protection Legislation.
	2. [The parties acknowledge that for the purposes of the Data Protection Legislation they are Joint Controllers of any Personal Data processed in connection with the Services. This Condition 23.2 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. The parties agree that the provisions of Schedule 1 and Schedule 2 shall not apply in relation to the parties’ data protection obligations under the Contract.]
	3. [Where the parties are Joint Controllers, the parties shall enter into a [joint controller agreement OR data sharing agreement] in respect to the Personal Data under joint control. The Parties agree to act reasonably and in good faith regarding agreeing the terms of such agreement.]

OR

* 1. [The parties agree that the provisions of Schedule 1 and Schedule 2 shall apply in relation to the parties’ data protection obligations under the Contract.]

The Council shall process all Provider Personal Data in accordance with the Council's privacy notice (as amended from time to time). The Council may provide the Provider with direct marketing communications provided that the Provider has not opted out of such communications.

1. **TERMINATION**

* 1. On or following the occurrence of any of the following: (a) an Insolvency Event; (b) if the Provider shall have committed a material breach of the Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 28 days of receipt of notice from the Council (a Remediation Notice) to do so or if a Consistent Failure has occurred; (c) where the Provider is an individual if the Provider shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983 or of Part V of the Mental Health (Scotland) Act 1984; (d) if any act or omission by the Provider or any sub-contractor causes, or in the Council’s reasonable opinion, is likely to cause, adverse publicity or damage to the reputation of the Council; (e) the Contract has been subject to a Substantial Modification; (f) the Provider was, on the date of commencement of the Contract, in one of the situations referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015; (g) the Contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the treaties (as defined in the Public Contracts (Scotland) Regulations 2015) and Directive 2014/24/EU that has been declared by the Court of Justice in a procedure under Article 258 of the treaty on the Functioning of the European Union, (h) any of the warranties provided in clause 4.1 become untrue; or (g) the Service Provider is in breach of the terms clause 6A; then the Council shall be entitled to terminate the Contract by notice to the Provider with immediate effect. Thereupon, without prejudice to any other of the Council’s rights, the Council may purchase the Goods elsewhere and/or complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Provider) all materials, plant and equipment on the Premises belonging to the Provider, and the Council shall not be liable to make any further payment to the Provider until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Provider the costs thereof incurred by the Council (including the Council's own costs). If the total cost to the Council exceeds the amount (if any) due to the Provider, the difference shall be recoverable by the Council from the Provider.
	2. In addition to the Council’s rights of termination under Condition 24.1, the Council shall be entitled to terminate the Contract by giving to the Provider not less than 30 days' notice to that effect.
	3. Termination under Conditions 24.1 and 24.2 or expiry of the Contract shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Council and shall not affect the continued operation of Conditions 1, 4, 10, 11, 13, 15, 17, 18, 19, 20, 21, 22, 24, 25, 28, 29, 30, 31, 33 and 34.
1. **RECOVERY OF SUMS DUE**

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

1. **ASSIGNATION AND SUB‑CONTRACTING**
	1. The Provider shall not assign or sub-contract any portion of the Contract without the prior written consent of the Council. Sub‑contracting any part of the Contract shall not relieve the Provider of any obligation or duty attributable to the Provider under the Contract. The Provider shall remain fully liable for all acts or omissions of any sub-contractor it appoints in relation to the Contract.
	2. No sub‑contracting by the Provider shall in any way relieve the Provider of any of his responsibilities under the Contract.
	3. Where the Provider enters into a sub-contract it must ensure that a provision is included which:
2. requires payment to be made of all sums due by the Provider to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Council has made payment to the Provider in respect of Goods or Services and the sub-contractor’s invoice relates to such Goods or Services then, to that extent, the invoice must be treated as valid and, provided the Provider is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Provider, payment must be made to the sub-contractor without deduction;

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

 (c) is in the same terms as that set out in this Condition 26 subject only to modification to refer to the correct designation of the equivalent party as the Provider and sub-contractor as the case may be.

* 1. The Provider shall also include in every sub-contract:
1. a right for the Provider to terminate the sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social, data protection or employment law or if any of the termination events specified in Condition 24.1 occur; and
2. a requirement that the sub-contractor includes a provision having the same effect as Conditions 26.3 26.4(a) above in any sub-contract which it awards.
	1. In the event that the name, contact details or legal representatives of any sub-contractor changes during the term of the Contract, the Provider shall provide to the Council details of the changes within five (5) Working Days.
3. **CONFLICT OF INTEREST**
	1. The Provider must take appropriate steps to ensure that the Council is not placed in a position where, in the reasonable opinion of the Council, there is an actual or potential conflict between the interests of the Provider and the duties owed to the Council under the Contract.
	2. The Provider must disclose by notice to the Council full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.
4. **NOTICES**

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

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

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

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

1. **DISPUTES**
	1. In the event of any dispute between the parties relating to the Contract either party may serve notice on the other outlining the terms of the dispute. Such notice shall propose a time and place for a meeting between the parties' representatives where they shall attempt to resolve the dispute. The other party shall respond to such a notice within five Working Days of receipt.
	2. If the matter is not resolved within ten Working Days of the service of the notice, the matter may be referred by either party to the appropriate senior officer in the Council and the appropriate senior officer in the Provider’s organisation for resolution. If the dispute is not resolved within a further ten Working Days the matter may be referred (by mutual agreement) for mediation, arbitration or other alternative dispute resolution but neither party shall be obliged to agree to do so.
	3. Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

1. **ENTIRE AGREEMENT**

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

1. **TUPE**
	1. The Provider recognises that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014) (TUPE) may apply in respect of the Contract, and that a relevant transfer for the purposes of the Regulations may occur upon: (a) the commencement of the Contract; and/or (b) the termination or expiry of the Contract.
	2. In addition to complying with its obligations under TUPE to provide employee liability information, during the period of six months preceding the expiry of the Contract or after the Council has given notice to terminate the Contract or after the occurrence of any of the events set out in clause 21.1, and within 20 Working Days of being so requested by the Council, the Provider shall fully and accurately disclose to the Council or to any person nominated by the Council information relating to employees engaged in providing the Services in relation to the Contract in particular, but not necessarily restricted to, the following:

 (a) the total number of personnel whose employment with the Provider is at risk of termination on the expiry or termination of the Contract, but for any operation of law; and

 (b)  for each person, their age and gender, details of their salary and benefits, date of commencement of continuous employment, any pay settlements covering that person which relate to future dates but which have already been agreed and their statutory and all other redundancy entitlements (the names of individual members of staff do not have to be given); and

 (c)  information about the other terms and conditions on which the affected staff are employed; and

 (d)  details of pensions entitlements, if any.

* 1. The Provider shall permit the Council to use the information for the purposes of TUPE and of re-tendering, which shall include such disclosure to potential replacement providers as the Council considers appropriate in connection with any re-tendering. The Provider will co-operate with the re-tendering of the contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.
	2. The Provider shall indemnify the Council and any new provider (the replacement provider) appointed by the Council and keep the Council and any replacement provider appointed by the Council indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses awarded against or incurred or paid by the Council or any replacement provider appointed by the Council arising from or in connection with the employment or engagement of any person by the Provider (or, as appropriate, its subcontractor) at any time during the term of the Contract in respect of the provision of the Services, or the termination of such employment or engagement during any period up to the date of expiry or termination of the Contract and/or in respect of any other claim under TUPE arising from an act or omission of the Provider (or its subcontractor).
	3. In the event that the information provided by the Provider in accordance with this condition becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Provider becoming aware that the information originally given was inaccurate, the Provider shall notify the Council of the inaccuracies and provide the amended information. The Provider shall be liable for any increase in costs the Council may incur as a result of any inaccurate or late production of data.
1. **FORCE MAJEURE**
	1. Subject to the remaining provisions of this Condition 32, neither party to the Contract shall be liable to the other for any delay or non-performance of its obligations under the Contract to the extent that such non-performance is due to a Force Majeure Event.
	2. In the event that either party is delayed or prevented from performing its obligations under the Contract by a Force Majeure Event, such party shall:

(a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;

(b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under the Contract; and

(c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

* 1. A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
	2. The Provider cannot claim relief if the Force Majeure Event is one where a reasonable service provider should have foreseen and provided for the cause in question.
	3. As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of the Contract. Where the Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with best practice in the Provider's industry sector.
	4. The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under the Contract. Following such notification, the Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
	5. The Council may, during the continuance of any Force Majeure Event, terminate the Contract by written notice to the Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than twenty (20) Working Days.
1. **TRANSITION PROVISIONS**
	1. At the termination of the Contract (and howsoever arising) the Provider shall promptly deliver to the Council upon request all the Council’s property (including but not limited to materials, documents, information, access keys) in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors.
	2. At the termination of the Contract (howsoever arising) and after the termination of the Contract the Provider shall provide assistance to the Council and any new provider appointed by the Council to continue or take over the performance of the Contract in order to ensure an effective handover of all work then in progress. Where the termination of the Contract arises due to the Provider’s default, the Provider shall provide such assistance free of charge. Otherwise the Council shall pay the Provider’s reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs. In appropriate circumstances, 3 months prior to the termination of the Contract the Provider shall assist in the implementation of any exit plan proposed by the Council to ensure the continuity of the Services after the date of termination of the Contract.
2. **GOVERNING LAW AND JURISDICTION**

The Contract shall be governed by and construed in accordance with Scottish law and the Provider hereby irrevocably submits to the exclusive jurisdiction of the Scottish courts.

**Schedule 1 - Data Protection Clauses**

**This is the Schedule 1 referred to in the foregoing Terms and Conditions**

**DEFINITIONS**

The definitions in this paragraph apply in this schedule.

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach**, and **Data Protection Officer** take the meaning given in the Data Protection Legislation;

**Data Loss Event**: any event that results, or may result, in unauthorised access to Personal Data held by the Provider under the Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data Breach;

**Data Protection Impact Assessment**: an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data;

**Data Subject Request**: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

**Parties**: the parties to the Contract, and “Party” shall be construed appropriately;

**Protective Measures**: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it, [including those outlined in Schedule [x] (Security)] [**GUIDANCE** – INSERT IF APPROPRIATE TO HAVE A SCHEDULE SETTING OUT SPECIFIC SECURITY MEASURES];

**Sub-processor**: any third Party appointed to process Personal Data on behalf of the Provider related to this Contract.

**2. DATA PROTECTION**

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Provider is the Processor, unless otherwise specified in Schedule 2. The only processing that the Provider is authorised to do is listed in Schedule 2 by the Council and may not be determined by the Provider.
2. The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation, or if any changes to the Data Protection Legislation may adversely affect the Provider's performance of the Services.
3. The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
	* 1. a systematic description of the envisaged processing operations and the purpose of the processing;
		2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
		3. an assessment of the risks to the rights and freedoms of Data Subjects; and
		4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
4. The Provider shall, in relation to any Personal Data processed in connection with its obligations under the Contract:
5. process that Personal Data only in accordance with Schedule 2, unless the Provider is required to do otherwise by any Applicable Laws. If it is so required, the Provider shall promptly notify the Council before processing the Personal Data unless prohibited by any Applicable Laws;
6. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
7. nature of the data to be protected;
8. harm that might result from a Data Loss Event;
9. state of technological development; and
10. cost of implementing any measures;
11. ensure that:
12. the Provider's Personnel do not process Personal Data except in accordance with the Contract (and in particular Schedule 2);
13. it takes all reasonable steps to ensure the reliability and integrity of any Provider's Personnel who have access to the Personal Data and ensure that they:
14. are aware of and comply with the Provider’s duties under this clause;
15. are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
16. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by the Contract; and
17. have undergone adequate training in the use, care, protection and handling of Personal Data; and
18. not transfer Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
19. the Council or the Provider has provided appropriate safeguards in relation to the transfer (as determined by the Council);
20. the Data Subject has enforceable rights and effective legal remedies;
21. the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
22. the Provider complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
23. at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Provider is required by any Applicable Laws to retain the Personal Data.

1. Subject to clause 2.6, the Contract shall notify the Council immediately if the Provider:
2. receives a Data Subject Request (or purported Data Subject Request);
3. receives a request to rectify, block or erase any Personal Data;
4. receives any other request, complaint or communication relating to either Party’s obligations under the Data Protection Legislation;
5. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Contract;
6. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by any Applicable Laws; or
7. becomes aware of a Data Loss Event.
8. The Provider’s obligation to notify under clause 2.5 shall include the provision of further information to the Council in phases, as details become available.
9. Taking into account the nature of the processing, the Provider shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 2.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
10. the Council with full details and copies of the complaint, communication or request;
11. such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
12. the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
13. assistance as requested by the Council following any Data Loss Event;
14. assistance as requested by the Council with respect to any request from the Information Commissioner’s Office, or any consultation by the Council with the Information Commissioner's Office.
15. The Provider shall maintain complete and accurate records and information regarding any processing of Personal Data it carries out for the Council, including but not limited to, the access, control and security of the Personal Data, approved Sub-processors and affiliates, the processing purposes, categories of processing, any transfers of personal data to a third country and related safeguards, and a general description of the Protective Measures referred to in clause 2.4 (b). The Provider shall provide such records and information to the Council on request.
16. The Provider shall allow for audits of its Data Processing activity by the Council or the Council’s designated auditor.
17. Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
18. Before allowing any Sub-processor to process any Personal Data related to the Contract, the Provider must:
19. notify the Council in writing of the intended Sub-processor and processing;
20. obtain the written consent of the Council;
21. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Schedule 1 such that they apply to the Sub-processor, and such written agreement shall terminate automatically on termination of the Contract for any reason; and
22. provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
23. The Provider shall remain fully liable for all acts or omissions of any Sub-processor, and shall indemnify the Council in respect of any loss, damages or claims incurred by the Council as a result of any breach of the Data Protection Legislation or this Schedule 1 by, the Provider and / or any Sub-processor, except and to the extent that such liabilities have resulted directly from the Council’s instructions.
24. On the Council's written request, the Provider will audit a Sub-processor's compliance with its obligations under the written agreement referred to at clause 2.11 (c) and provide the Council with the audit results.
25. The Council may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
26. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Council may on not less than 30 Working Days’ notice to the Provider amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

**Schedule 2 Schedule of Processing, Personal Data and Data Subjects**

**This is the Schedule 2 referred to in the foregoing Terms and Conditions**

**[NB THIS SCHEDULE MUST BE COMPLETED ON A CONTRACT-BY-CONTRACT BASIS]**

1. The contact details of the Council’s Data Protection Officer are: Kevin Wilbraham,

Information Governance Unit

City of Edinburgh Council

Waverley Court - 2:1

4 East Market Street

Edinburgh

EH8 8BG

Email: Information.compliance@edinburgh.gov.uk | Tel: 0131 200 2340

1. The contact details of the Provider’s Data Protection Officer are: [Insert Contact details] [DELETE IF PROVIDER DOES NOT, AND IS NOT REQUIRED TO, HAVE A DPO]
2. The Provider shall comply with any further written instructions provided by the Council from time to time with respect to processing Personal Data under the Contract.
3. Any such further instructions shall be incorporated into this Schedule.

| **Description** | **Details** |
| --- | --- |
| Identity of the Controller and Processor | The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Provider is the Processor in accordance with Clause 2.1 of Schedule 1. |
| Subject matter of the processing | *[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.* *Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]* |
| Duration of the processing | *[Clearly set out the duration of the processing including dates]* |
| Nature and purposes of the processing | *[Please be as specific as possible, but make sure that you cover all intended purposes.* *The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.**The purpose might include: employment processing, statutory obligation, recruitment assessment etc]* |
| Type of Personal Data being Processed | *[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]* |
| Categories of Data Subject | *[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particularwebsite etc]* |
| Plan for return and destruction of the data once the processing is completeUNLESS requirement under union or member state law to preserve that type of data | *[Describe how long the data will be retained for, how it be returned or destroyed]* |

**Schedule 3 Cyber Security Requirements**

**This is the Schedule 3 referred to in the foregoing Terms and Conditions**

**[INSERT ANY REQUIREMENTS IN RELATION TO CYBER SECURITY. SEE SCHEDULE PART 4 of LONG FORM FOR EXAMPLE PROVISIONS]**