

**ORKNEY ISLANDS COUNCIL
CONDITIONS OF CONTRACT
RELATING TO SUPPLY OF GOODS**

Introduction

These Conditions together with the additional terms set out in the agreement between the Authority (as defined in the following Condition 1) and the Contractor (as so defined) for supply of the Goods (as so defined) constituted by

- (1) the tender offer from the Contractor to the Authority to supply the Goods; and
- (2) the Authority's letter of unqualified acceptance of that tender; or
- (3) the Authority's letter of qualified acceptance of that tender and the Contractor's unqualified acceptance thereof;

(all hereinafter referred to as the "Contract") shall govern the supply of the Goods.

1. Interpretation

1.1 In these Conditions:

"Authority" means Orkney Islands Council of Council Offices, Kirkwall, Orkney, KW15 1NY

"Commencement Date" means the date as specified in the Contract

"Conditions" means these standard terms and conditions together with the Schedule(s) attached hereto and (unless the context otherwise requires) includes any special terms and conditions expressly agreed in Writing between the Authority and the Contractor

"Confidential Information" means all information which the Contractor receives by whatever means in relation to the Contract and the Goods, including information verbally designated as confidential, Information which relates to the business and affairs of the Authority and any third parties and including, without limitation, Information as to the working of any process or invention carried on or used by the Authority or which may be made or disclosed by the Contractor in performing his obligations under the Contract

"Contract Award Date" means the date specified in the Contract

"Contractor" means the contractor as so designed in the Contract

"Data Controller", "Data Processor", "Data Subject" and "Data Subject Access Request" have the meanings given in the Data Protection Laws

"Data Protection Laws" means any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of

Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the UK GDPR

“Delivery Address” means the address stated in the Contract

“FOISA” means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Scottish Information Commissioner in relation to such legislation

“Goods” means the goods (including any instalment of the goods or any part of them) to be provided by the Contractor to the Authority as set out in the Contract as varied in accordance with these Conditions

“Information” means any type of recorded communication, documentation, data or record that can be referenced at a later date, irrespective of the format or the medium in which it is stored

“Instruction” means an instruction to the Contractor requesting supply of Goods to the Authority

“IPR” means any patent, patent application, know-how, service mark, registered or unregistered trade mark, registered or unregistered design right, copyright, database right or other similar industrial, commercial or other intellectual property rights which may subsist in any part of the world and all rights attaching thereto (including but not limited to goodwill)

“Month” means calendar month

“Personal Data” has the meaning given in the Data Protection Laws

“Price” means the price exclusive of any applicable Value Added Tax, payable to the Contractor by the Authority, as set out in the Contract, subject to these Conditions

“Pricing Schedule” means the details of the Price as set out in the Contract

“Processing” has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly

“RPIX Percentage” means the percentage variation in the UK all items retail price index excluding mortgage payments, as published by the UK Office for National Statistics

“Specification” includes any plans, drawings, data or other information relating to the Goods

‘Supervisory Authority’ has the meaning given in the Data Protection Laws

“Term” means the period from the Commencement Date until the Termination Date or such earlier date of termination in accordance with these Conditions

“Termination Date” means the date so specified in the Contract

“UK GDPR” means the retained EU law version of the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of [section 3](#) of the European Union (Withdrawal) Act 2018 and as amended by [Schedule 1](#) to the [Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(SI 2019/419\)](#)

“Working Day” means a day other than a Saturday, Sunday or Bank Holiday within the meaning of the Banking and Financial Dealings Act 1971

“Writing” includes telex, cable, facsimile transmission, electronic communication (as defined in the Electronic Communications Act 2000) and comparable means of communication.

1.2 In these Conditions except where the context otherwise requires:

- (a) the singular shall include the plural;
- (b) the masculine shall include the feminine and the neuter and vice versa;
- (c) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to that statute, enactment, order, regulation or instrument as amended, re-enacted or extended at the relevant time;
- (d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
- (e) the headings are for convenience only and shall not affect the interpretation or construction of the Conditions.

2. Basis of purchase

- 2.1 All Goods shall be purchased subject to these Conditions and by way of the issue of an Instruction.
- 2.2 Instructions may be issued to the Contractor in Writing or verbally, to be confirmed in Writing. The Contractor shall provide up to date contact details (including a telephone number) of the person to whom an Instruction should be issued and shall immediately notify the Authority in Writing of any change in the identity of this person. No variation to an Instruction shall be binding unless confirmed in Writing by the Authority.
- 2.3 The Goods shall be delivered to the Delivery Address on the date or within the period stated in the Contract, in either case during the Authority's usual business hours.
- 2.4 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Authority or subject to which any order or Instruction is accepted or purported to be accepted by the Contractor and in the event of any conflict between these Conditions and the Contract, these Conditions shall prevail.
- 2.5 No variation to these Conditions shall be binding unless expressly agreed in Writing between the Authority and the Contractor.

3. Supply of the Goods

- 3.1 The quantity, quality and description of the Goods shall, subject as provided in these Conditions, be as specified in any Instruction, the Contract and in any other applicable Specification supplied in Writing by the Authority to the Contractor. [In the event of any conflict between the Contract and any Instruction, the Instruction shall prevail.]
- 3.2 Where the quantity of Goods is not specified in the Contract, Goods shall be requested by the issue of an Instruction in Writing to the Contractor, with which the Contractor shall comply. Any such Instruction shall give the Contractor reasonable notice of the specified date or period for delivery of the Goods and/or the quantity of Goods required by the Authority. No variation to an Instruction shall be binding unless confirmed in Writing by the Authority. If the quantity of Goods is not specified in the Contract, the level of Instructions which may be issued to the Contractor shall be variable at the Authority's sole discretion. The Authority shall have no obligation to issue any minimum level of Instructions or to pay any minimum Price to the Contractor during the term of the Contract.
- 3.3 Any Specification supplied by the Authority to the Contractor, or specifically produced by the Contractor for the Authority, in connection with the Contract, together with any IPR in the Specification, shall be the exclusive property of the Authority. The Contractor shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Contractor, or as required for the purpose of the Contract.

- 3.4 The Contractor shall comply with these Conditions and with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods (including without limitation those relating to the manufacture, packaging, packing and delivery of the Goods) and all relevant Authority policies and procedures (which, for the avoidance of doubt, the Authority may introduce or amend, at its sole discretion, from time to time) concerning the supply of the Goods. Without prejudice to the generality of the foregoing, the Contractor shall comply with legal requirements and Authority policies and procedures in relation to freedom of information, data protection, conflict of interest and health and safety.
- 3.5 [If the Goods not supplied to the satisfaction of the Authority at the time and date specified in the Contract and any Instruction then, without prejudice to any other remedy, the Authority shall be entitled to deduct from the Price or (if the Authority has paid the Price) to claim from the Contractor by way of liquidated damage for delay [] per cent ([]%) of the standard monthly amount as shown in the Contract in respect of the Contract and each Instruction with which the Contractor did not perform to the satisfaction of the Authority, up to a maximum of [] per cent ([]%) of the standard monthly amount as shown in the Contract which amount represents a genuine pre-estimate of the damage which would be caused to the Authority in the event of delay.]
- 3.6 The Contractor shall not unreasonably refuse any request by the Authority to inspect and test the Goods during manufacture, processing or storage at the premises of the Contractor or any third party prior to despatch, and the Contractor shall provide the Authority with all facilities reasonably required for inspection and testing.
- 3.7 If as a result of inspection or testing the Authority is not satisfied that the Goods will comply in all respects with the Contract, and the Authority so informs the Contractor within 7 days of inspection or testing, the Contractor shall take such steps as are necessary to ensure compliance.
- 3.8 The Goods shall be marked in accordance with the Authority's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.
- 3.9 The guarantee period applicable to the Goods shall be 12 months from putting into service or 18 months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in Writing between the Authority and the Contractor). If the Authority shall within such guarantee period or within 30 days thereafter give notice in Writing 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 Authority may have) as quickly as possible remedy such defects (whether by repair or replacement as the Authority shall elect) without cost to the Authority. Any Goods rejected or returned by the Authority in this way shall be returned to the Contractor at the Contractor's risk and expense
- 3.10 At all times while it is on Authority premises, the Contractor shall comply with such rules, regulations and requirements (including those relating to security

and health & safety arrangements) as may be in force from time to time for the conduct of personnel when at those premises. The Contractor shall leave any Authority premises immediately if requested to do so by the Authority. The Contractor shall provide to the Authority, on request by the Authority, a list of the names and addresses of persons whom it expects may require admission to Authority premises and shall ensure that it informs the Authority immediately in Writing of any changes to this list.

- 3.11 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Contract.
- 3.12 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request.
- 3.13 If the Goods are to be supplied in instalments, then the Contract shall be treated as a single Contract and not severable.

4. Delivery of Goods

- 4.1 The time of delivery of the Goods as set out in the Instruction or as otherwise notified to the contractor in Writing is of the essence of the Contract.
- 4.2 A packing note quoting the Authority's reference must accompany each delivery or consignment of the Goods and must be displayed prominently.
- 4.3 If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and not severable.
- 4.4 The Authority shall be entitled to reject any Goods delivered which are not in accordance with the Contract, of satisfactory quality or fit for purpose, and may withhold payment or part thereof due under Condition 5. Goods rejected under this Condition shall be removed by the Contractor at the Contractor's expense within seven (7) days of the date of receipt of notification of their rejection.
- 4.5 The Authority shall not be deemed to have accepted any Goods until the Authority has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 4.6 The Contractor shall supply the Authority in good time with any instructions or other Information required to enable the Authority to accept delivery of the Goods and before delivering the Goods to the Authority, the Contractor shall supply the Authority in Writing with such instructions on the storage, carriage and use of the Goods as the Authority could reasonably be expected to require.
- 4.7 The Authority shall not be obliged to return to the Contractor any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Authority.
- 4.8 Risk of damage to or loss of the Goods shall pass to the Authority upon delivery to and acceptance by an authorised officer of the Authority in accordance with the Contract.

- 4.9 The title to the Goods shall pass to the Authority upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Authority once payment has been made and the Goods have been appropriated to the Contract.
- 4.10 The Contractor shall not unreasonably refuse any request by the Authority to inspect and test the Goods during manufacture, processing or storage at the premises of the Contractor or any third party prior to despatch, and the Contractor shall provide the Authority with all facilities reasonably required for inspection and testing.
- 4.11 If as a result of inspection or testing the Authority is not satisfied that the Goods will comply in all respects with the Contract, and the Authority so informs the Contractor within 7 days of inspection or testing, the Contractor shall take such steps as are necessary to ensure compliance.
- 6.12 The Goods shall be marked in accordance with the Authority's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.
- 4.13 Nothing in these Conditions or in the Contract 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 Authority's opinion, then the Authority may, at its own discretion, determine the Contract as a whole or only in respect of the Goods which are unsatisfactory.

5. Price and Payment

- 5.1 The prices and rates shown in the Contract are inclusive of all payments to any sub-contractor and the Contractor shall be responsible for all payments to any sub-contractors. The Contractor shall pay promptly all fees due for payment to any sub-contractor in respect of the Goods.
- 5.2 The prices and rates shown in the Contract shall remain fixed for twelve months from the Commencement Date. Prices and rates will be subject to an annual review on each anniversary of the Commencement Date in accordance with Condition 6.
- 5.3 The Contractor shall submit an invoice each Month (in arrears) to the Authority for the standard monthly amount specified in the Contract and in respect of any Goods delivered to the Authority during the preceding Month.
- 5.4 The Authority shall pay the Contractor a sum equal to the Value Added Tax chargeable on the Price. The monthly invoices to be submitted by the Contractor to the Authority shall show any valid Value Added Tax separately as a strictly net charge. The Price of the Goods shall be inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than Value Added Tax.

- 5.5 The Contractor may invoice the Authority in respect of any agreed expenses in accordance with the Pricing Schedule. The Contractor will invoice the Authority for such agreed expenses on a strictly net charge basis, and such expenses should be included on the monthly invoices. Expenses shall not exceed [] per [] without the prior written consent of the Authority. Expenses claims shall not be paid by the Authority unless received evidence of expenditure to the satisfaction of the Authority is submitted with the expenses claim.
- 5.6 Each invoice shall contain an appropriate reference and a detailed breakdown of the Goods supplied for the relevant month and shall be supported by proof of expenditure and any other documentation reasonably required by the Authority to substantiate the invoice.
- 5.7 On receipt of an invoice from the Contractor, the Authority shall pay undisputed sums due to the Contractor in cleared funds within thirty days of receipt of the invoice, or in respect of Goods, if later, after acceptance of the Goods in question by the Authority.
- 5.8 The Authority may reduce the Price in respect of any Goods which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority. If it proposes to reduce the Price in this way, the Authority shall notify the Contractor of this within ten Working Days of receiving the invoice from the Contractor.
- 5.9 The Authority shall be entitled to reclaim from the Contractor any sums which are paid to the Contractor by the Authority in error or which have been paid in respect of Goods which the Authority decides have not been satisfactorily performed or delivered, or which have been paid pursuant to an erroneous or fraudulent invoice being submitted by the Contractor.
- 5.10 Any discounts in prices paid by the Contractor supply of Goods by any sub-contractor shall be reflected in an equivalent discount in the Price. The Authority shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Contractor whether or not shown on its own terms and conditions of sale.
6. **[Payment of invoices in supply chains *[May not be relevant for most goods contracts but may be if they are being manufactured]***
- 6.1. Where the Contractor enters into a sub-contract for the purpose of supplying Goods the Contractor shall cause a term to be included in such sub-contract:
- 6.1.1. Which requires payment to be made 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, for the purpose of payment alone, where the Authority has made payment to the Contractor and the sub-contractor's invoice includes Goods in relation to which payment has been by made the Authority then, to the extent that it relates to such Goods, the invoice shall be treated as valid and payment shall be made to the sub-contractor without deduction;

6.1.2. Which notifies the sub-contractor that the contract forms part of a larger contract for the benefit of the Authority 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 Authority;

6.1.3. In the same terms as that set out in this clause 6.1 (including for the avoidance of doubt this clause 6.1.3) subject only to the modification to refer to the correct designation of the equivalent party as the Contractor and sub-contractor as the case may be.]

7. Pricing Review

- 7.1 Within ten Working Days of the anniversary of the Commencement Date, the Contractor shall submit a proposal in Writing to the Authority setting out the prices and rates which it considers should apply to the supply of the Goods for the twelve Months following that anniversary of the Commencement Date.
- 7.2 The Contractor and the Authority shall have two Months from the anniversary of the Commencement Date to agree on the prices and rates which should apply to the supply of Goods for the twelve Months following that anniversary of the Commencement Date.
- 7.3 If the Contractor and the Authority fail to agree in accordance with Condition 7.2, the Price which shall apply to the supply of Goods for the twelve Months following that anniversary of the Commencement Date shall be the Price applicable to the supply of Goods immediately prior to that anniversary of the Commencement Date, plus a sum adjusted on the basis of the RPIX Percentage in respect of the twelve Months prior to that anniversary of the Commencement Date.
- 7.4 Any adjustment in the Price made pursuant to this Condition shall be backdated to the relevant anniversary of the Commencement Date.

8. Recovery of Sums Due

- 8.1 Wherever any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay the Authority in respect of any breach of these Conditions), the Authority may unilaterally deduct that sum from any other sum then due, or which at any later time may become due to the Contractor under these Conditions or under any other agreement or contract with the Authority.
- 8.2 Any overpayment by the Authority to the Contractor, whether of the Price, Value Added Tax, or reimbursement of expenses shall be a sum of money recoverable by the Authority from the Contractor.
- 8.3 The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

9. Risk and Property

- 9.1 Risk of damage to or loss of the Goods shall pass to the Authority upon delivery to the Authority in accordance with the Contract.
- 9.2 The property in the Goods shall pass to the Authority upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Authority once payment has been made and the Goods have been appropriated to the Contract.

10. Warranties and liability

- 10.1 The Contractor warrants to the Authority that the Goods:
 - 10.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Contractor or made known to the Contractor in Writing prior to or at the time the Contract is entered into and as it is reasonable for the Authority to expect in all the circumstances;
 - 10.1.2 will be free from defects in design, material and workmanship;
 - 10.1.3 will correspond with any relevant Specification or sample; and
 - 10.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods.
- 10.2 The Contractor warrants to the Authority that:-
 - 10.2.1 there is no inhibition, restriction or prohibition which in any way affects the capacity or power of the Contractor to enter into or perform its obligations in terms of the Contract;
 - 10.2.2 the Contractor has sufficient resources to supply the Goods; and
 - 10.2.3 the Contractor is and shall be at all relevant times suitably qualified, trained and competent to supply the Goods and shall maintain membership of such professional or other bodies as the Authority may require.
- 10.3 Without prejudice to any other remedy, if any Goods are not supplied in accordance with the Contract, then the Authority shall be entitled:
 - 10.3.1 to require the Contractor to repair the Goods or to supply replacement Goods in accordance with the Contract within 7 days; or
 - 10.3.2 at the Authority's option to treat the purchase of those Goods which have not been supplied to the Authority's satisfaction as discharged by the Contractor's breach and to withhold payment (or if paid to require repayment) of the whole or any part of the Price attributable to those Goods; or
 - 10.3.3 at the Authority's sole option, and whether or not the Authority has previously required the Contractor to repair the Goods or to supply any

replacement Goods, to treat the Contract as discharged by the Contractor's breach and require the repayment of any part of the Price which has been paid; or

10.3.4 without terminating the Contract, itself provide or procure the supply of part of the Goods until such time as the Contractor shall have demonstrated to the satisfaction of the Authority that the Contractor will be able to supply such part of the Goods in accordance with the Contract; or

10.3.5 without terminating the whole of the Contract, terminate the Contract in respect of part of the or Goods only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Goods.

10.4 Provided always that the liability of the Contractor shall be unlimited in respect of death or personal injury caused by its own negligence the Contractor shall indemnify the Authority subject to the limits provided under the insurance policies to be obtained under clause 10.9 below in respect of each event or series of connected events against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Authority as a result of or in connection with:

10.4.1 breach of any warranty given by the Contractor in relation to the Goods:

10.4.2 any breach or non-observance of these Conditions by the Contractor or its employees;

10.4.3 any claim that the Goods or any invention, discovery or improvement referred to in Condition 10.10 infringes, or the importation, use or resale of the Goods, infringes, the IPR of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Authority;

10.4.4 any liability under the Consumer Protection Act 1987 in respect of the Goods;

10.4.5 any act or omission of the Contractor or its employees in supplying, delivering and installing the Goods;

8.4.6 infringement or unauthorised use of any kind of any of the Authority's IPR by the Contractor; and

8.4.7 any failure by the Contractor or its employees to comply with any statutes, orders, regulations, bye laws or other legal requirements or Authority policies and procedures in connection with supply of the Goods.

10.5 Neither the Contractor nor the Authority shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods, if the delay or failure is beyond that party's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond either party's reasonable control:

- 10.5.1 Act of God, explosion, flood, tempest, fire or accident;
- 10.5.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 10.5.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority [other than the Authority (where any delay is occasioned by the Authority)];
- 10.5.4 import or export regulations or embargoes;
- 10.6 If either the Contractor or the Authority becomes aware of causes beyond that party's reasonable control which give rise to or which are likely to give rise to any failure or delay on its part as described in Condition 10.5 it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such a failure or delay shall continue.
- 10.7 The Contractor shall be responsible for meeting, and shall indemnify the Authority against all tax and National Insurance contributions and all emoluments, PAYE and the whole other employment costs (if any) of the Contractor. Nothing in this Contract shall be construed as constituting the Contractor as an employee or agent of the Authority and the Contractor will not hold himself out as such.
- 10.8 [The Contractor undertakes to advise the Authority by notice in Writing if any Instruction requires supply of goods beyond the scope of the Specification and on request to work with the Authority and any other contractor nominated by the Authority to obtain provision of appropriate additional goods.]

- 10.9 The Contractor shall maintain and shall procure that any sub-contractor shall maintain in force such insurance appropriate to the Contractor's business and any sub-contractor's business (as the case may be) and the Contract, for such level of cover all as will be specified by the Authority (including, without limitation, in respect of employer's liability, public liability and professional indemnity insurance as appropriate) and shall provide copies of the relevant policies and receipts for premiums to the Authority on request.
- 10.10 The Contractor undertakes:
- 10.1to assist the Authority in developing improved Goods and systems for delivery of Goods and to provide to the Authority full details of any improvement in the products, services, processes, equipment or systems of the Authority and any invention, discovery or improvement in the area of operations of the Authority which the Contractor may make;
 - 10.2to procure that ownership of all IPR in such inventions, discoveries or improvements developed or otherwise generated by the Contractor or its employees in connection with the Contract shall vest exclusively in the Authority and shall be assigned to the Authority in such terms as the Authority may reasonably require;
 - 10.3to apply for and to execute and do, at the Contractor's cost, all such deeds, documents, acts and things as in the opinion of the Authority may be necessary to obtain patent or other protection for any such inventions, discoveries or improvements in any part of the world and to vest such patent or other protection in the Authority and to assist the Authority in obtaining and maintaining such protection;
 - 10.4to procure that no exploitation, reproduction, sale, disposal, licence or disclosure of such IPR shall be granted or permitted except to the Authority or as it may direct;
 - 10.5to work with the Authority and other contractors engaged by the Authority to improve standards of performance and to develop consistent approaches to supply of Goods; and
 - 10.6to procure that ownership of all IPR (including, without limitation, all future copyright) in reports and all other documents generated by the Contractor or its employees in connection with the Contract shall vest exclusively in the Authority and shall be assigned to the Authority in such terms as the Authority may reasonably require.

11. Termination

- 11.1 The Authority shall be entitled to cancel the Contract in respect of all or part only of the Goods by giving notice to the Contractor at any time prior to delivery, in which event the Authority's sole liability shall be to pay to the Contractor the Price for the Goods in respect of which the Authority has exercised its right of cancellation, less the Contractor's net saving of cost arising from cancellation.

- 11.2 The Authority shall be entitled to terminate the Contract with immediate effect without liability to the Contractor by giving notice in Writing to the Contractor at any time if:
- 11.2.1 the Contractor shall have been guilty of dishonesty or serious neglect of duty or any conduct likely to bring the Authority or the Contractor into disrepute; or
 - 11.2.2 the Contractor (being an individual) is sequestrated or apparently insolvent or compounds with or grants a trust deed for the benefit of his creditors; or
 - 11.2.3 the Contractor (being a company) makes a voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or becomes subject to an administration order or goes into liquidation (other than for the purpose of amalgamation or reconstruction);
 - 11.2.4 an encumbrancer takes possession or a receiver is appointed to any of the assets of the Contractor or the Contractor becomes unable to pay its debts (within the meaning of the Insolvency Act 1986); or
 - 11.2.5 the Contractor ceases, or threatens to cease, to carry on business; or
 - 11.2.6 the Authority reasonably apprehends that any of the events mentioned in the preceding sub-paragraphs 1-5 of this Condition is about to occur in relation to the Contractor and notifies the Contractor accordingly.
 - 11.2.7 the Contractor (being an individual) shall have become a patient or have become of unsound mind for the purpose of any statute relating to mental health; or
 - 11.2.8 the Contractor shall have omitted or committed any act which constitutes a material or persistent breach of its obligations to the Authority; or
 - 11.2.9 the Contractor shall refuse or neglect to comply with any lawful orders or directions given by the Authority; or
 - 11.2.10 the Contractor is convicted of a criminal offence (other than minor road traffic offences); or
 - 11.2.11 the Contractor undergoes a change of control (within the meaning of section 416 of the Income and Corporation Taxes Act 1998); or
 - 11.2.12 the Contractor is a partnership and there is a change in the constitution of that partnership.
- 11.3 The Authority may terminate the Contract in the event that:
- 11.3.1 the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015 or regulation 86(7) of

the Utilities Contracts (Scotland) Regulations 2016 as applicable;

11.3.2 the Contractor has, at the time of contract award, been in one of the situations referred to in regulation 58(1) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure;

11.3.3 the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union;

11.3.4 there has been a failure by the Contractor to comply in the performance of the Contract with legal obligations in the fields of environmental, social and employment law.

11.4 Any delay by the Authority in exercising any right of termination shall not constitute a waiver by it nor shall it release the Contractor from full performance of its obligations under the Contract.

12. Consequences of Termination

12.1 Where the Authority terminates the Contract in respect of all or part of the Goods, other than in accordance with Condition 11.1 the Authority shall be entitled to recover from the Contractor the costs incurred of making other arrangements for the supply of the Goods and any additional related expenditure incurred by the Authority.

12.2 Where the Authority terminates the Contract in respect of all or part of the Goods, other than in accordance with Condition 9.1, no further payments shall be payable by the Authority to the Contractor until the Authority has established the final cost to it of the arrangements and expenditure referred to in Condition 12.1.

12.3 On termination of the Contract for whatever reason, and in the periods prior to and subsequent to such termination, the Contractor shall co-operate fully with the Authority to ensure a smooth transition to any person who will provide the Goods or similar goods to the Authority after termination of the Contract.

13. Prevention of Corruption

The Authority shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation:

13.1 if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or a reward for taking, permitting or omitting to take any action in relation to the obtaining or execution of the Contract or any other agreement or contract with the Authority, or for showing favour or disfavour to any person in relation to the Contract or any other tender or contract with the Authority; or

- 13.2 in the event of any such act as referred to in Condition 13.1 by any agent or any person acting on behalf of the Contractor (whether with or without the knowledge of the Contractor); or
- 13.3 if in relation to the Contract or any other contract with the Authority the Contractor or any agent or any person acting on behalf of the Contractor has committed any statutory or other offence in relation to the Contract or any other agreement or contract with the Authority.

14. Prevention of Collusion

The Authority reserves the right to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor, its agent or other person acting on its behalf (whether with or without the knowledge of the Contractor) shall have been involved in any collusion in tendering for the Contract or any other contract with the Authority or shall have employed corrupt or illegal practices either in obtaining or executing the Contract or any other contract with the Authority.

15. Discrimination

The Contractor confirms their commitment to the Equality Act 2010, including the public sector equality duty, and the Human Rights Act 1998 or any other relevant legislation. The Contractor shall not act unlawfully, either directly or indirectly, on the grounds of any of the protected characteristics detailed within the Equality Act 2010 (including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and will act in compliance with, and take all reasonable steps to assist the Council in its compliance with the public sector equality duty, including the general equality duty, as defined in Section 149 of the Equality Act 2010. The Contractor shall also take all reasonable steps to secure the observance of this Clause, and compliance with the Equality Act 2010 and the Human Rights Act 1998, by all agents, employees and sub-contractors of the Contractor engaged by the Contractor in the execution of the Contract.

16. Data Protection

- 16.1 The Contractor acknowledges that Personal Data described in the scope of the Schedule (Data Protection) may be Processed in connection with the Contract. For the purposes of any such Processing, the parties agree that the Contractor acts as the Data Processor and the Authority acts as the Data Controller.
- 16.2 Both parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both parties meet all their obligations under Data Protection Laws. The provisions of this Condition 16 are without prejudice to any obligations and duties imposed directly on the Contractor under Data Protection Laws and the Contractor hereby agrees to comply with those obligations and duties.
- 16.3 The Contractor will, in conjunction with the Authority and in its own right and in respect of the Contract, make all necessary preparations to ensure it will be compliant with Data Protection Laws.

- 16.4 The Contractor will provide the Authority with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 16.5 The Contractor must:
- 16.5.1 process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Authority (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by UK law or regulatory body to which the Contractor is subject; in which case the Contractor must, unless prohibited by that law, inform the Authority of that legal requirement before processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Contractor's obligations under this Contract or as is required by the law;
 - 16.5.2 subject to Condition 16.5.1 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Authority's prior written consent and on such conditions as the Authority may stipulate;
 - 16.5.3 take all reasonable steps to ensure the reliability and integrity of any of the Contractor's staff who have access to the Personal Data and ensure that the Contractor's staff:
 - (a) are aware of and comply with the Contractor's duties under this Condition;
 - (b) are subject to appropriate confidentiality undertakings with the Contractor or the relevant sub-contractor;
 - (c) 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 Authority or as otherwise permitted by this Contract; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
 - 16.5.4 implement appropriate technical and organisational measures in accordance with Article 32 of the UK GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
- 16.6 The Contractor shall not engage a sub-contractor to carry out Processing in connection with the Contract without prior specific or general written authorisation from the Authority. In the case of general written authorisation, the Contractor must inform the Authority of any intended changes concerning the addition or replacement of any other sub-contractor and give the Authority an opportunity to object to such changes.

16.7 If the Contractor engages a sub-contractor for carrying out Processing activities on behalf of the Authority, the Contractor must ensure that the same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Contractor shall remain fully liable to the Authority for the performance of the sub-contractor's performance of the obligations.

16.8 The Contractor must provide to the Authority reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the UK GDPR. The Contractor must notify the Authority if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Laws;
- (d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Contract; or
- (e) 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 law or regulatory order;

and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Purchaser from time to time.

16.9 Taking into account the nature of the Processing and the information available, the Contractor must assist the Authority in complying with the Authority's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the UK GDPR. These obligations include:

- (a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.
- (b) notifying a Personal Data breach to the Authority without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
- (c) assisting the Authority with communication of a personal data breach to a Data Subject;

- (d) supporting the Authority with preparation of a data protection impact assessment;
- (e) supporting the Authority with regard to prior consultation of the Supervisory Authority.

16.10 At the end of the provision of any Goods or Services relating to processing the Contractor must, on written instruction of the Authority, delete or return to the Authority all Personal Data and delete existing copies unless UK law requires storage of the Personal Data.

16.11 The Contractor must:

- (a) provide such information as is necessary to enable the Authority to satisfy itself of the Contractor's compliance with this Condition 16;
- (b) allow the Authority, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Condition 16 and contribute as is reasonable to those audits and inspections;
- (c) inform the Authority, if in its opinion, an instruction from the Authority infringes any obligation under the Data Protection Laws.

16.12 The Contractor must maintain written records including in electronic form, of all Processing activities carried out in performance of the Contract or otherwise on behalf of the Authority containing the information set out in Article 30(2) of the UK GDPR.

16.13 If requested, the Contractor must make such records referred to Condition 16.12 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.

16.14 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Condition 16.13 with minimum disruption to the Contractor's day to day business.

17. Confidentiality

17.1 The Contractor shall:-

17.1.1 treat all Confidential Information as confidential and safeguard it accordingly; and

17.1.2 not disclose any Confidential Information to any other person without the prior written consent of the Authority, except to such persons and to such extent as may be necessary for the performance of the Contract (and then subject to the same obligations of confidentiality) or except where disclosure is otherwise expressly permitted by the provisions of these Conditions;

- 17.1.3 not use any Confidential Information otherwise than for the purposes of the Contract; and
- 17.1.4 ensure that any person to whom Confidential Information is disclosed in terms of this Condition is informed of its confidential nature and the Contractor shall be responsible for breach of this Condition by any such person.
- 17.2 The provisions of Condition 17.1 shall not apply to any Confidential Information:
- (a) which is or becomes public knowledge (otherwise than by breach of this Condition);
 - (b) which was in the possession of the Contractor, without restriction as to its disclosure, before receiving it in connection with this Contract;
 - (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - (d) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Contractor.
- 17.3 On termination of the Contract, the Contractor shall deliver to the Authority or its authorised representative, all files, documents, working papers and other records (in any medium) containing Information relating to the Authority or relating to or obtained as a result of the Contract. The Contractor shall not retain copies of such Information, except as is required for tax, accounting and auditing purposes. If the Contractor passes copies of such Information to third parties, the Contractor shall procure that such third parties are bound by similar obligations as are contained in this Condition [17] and that any such third parties return all such copies of such Information on termination of this Contract to the Authority.
- 17.4 For the avoidance of doubt, nothing in this Condition [17] shall prevent the disclosure of relevant Information by the Contractor to the Authority.

18. Information

- 18.1 The Authority shall be entitled to unrestricted access both during and after termination of the Contract to all Information which the Contractor holds in relation to the Contract or the Goods and to use such Information for any purpose it sees fit, both during and after termination of the Contract.
- 18.2 The Contractor shall respond to any requests for Information from the Authority within five Working Days of receiving a request for information from the Authority.

19. Freedom of Information

- 19.1 The Contractor shall ensure that the Authority is able to comply with its obligations under FOISA insofar as this is within the control of the Contractor.

19.2 The Contractor shall pass any requests it receives for Authority information to the Authority to be processed and will not disclose any information relating to the Authority, the Goods or the Contract without the express consent of the Authority.

20. Publicity, Media and Official Enquiries

The Contractor shall not make any press announcements or publicise the Contract or any part thereof or any information relating to the supply of the Goods in any way, except with the written consent of the Authority.

21. Assignment and Sub-Contracting

21.1 The Contract is personal to the Contractor and the Contractor shall not assign or transfer or purport to assign or transfer to any other person any of its rights or obligations under the Contract.

21.2 The Contractor shall not be entitled to sub-contract any of its obligations under the Contract without the prior written consent of the Authority and then only to a sub-contractor approved by the Authority in Writing in advance. A sub-contractor shall not be entitled to sub-contract any of its obligations. Sub-contracting shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract and the Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own. The Contractor shall procure that any sub-contractor shall be obliged not to do or omit to do anything which could place the Contractor in breach of its obligations in terms of these Conditions or the Contract.

21.3 Where the Authority has consented to the placing of sub-contracts, the Contractor shall include in every sub-contract:

21.3.1 a right for the Contractor to terminate that sub-contract if the relevant subcontractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in Condition 11.3 occur;

21.3.2 a requirement that the sub-contractor includes a provision having the same effect as 21.3.1 above in any sub-contract which it awards.

21.4 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Contractor to the Authority within five Working Days of a request by the Authority for a copy of any sub-contract.

21.5 The Authority may assign its rights and obligations under the Contract to any person without the consent of the Contractor.

22. Variation of the Goods

The Authority reserves the right giving reasonable written notice from time to time to request changes to the Goods for any reason whatsoever. To request such a

change, the Authority shall issue a notice in Writing to the Contractor specifying the changes it requests. Within 10 Working Days of receiving such a notice, the Contractor shall submit a notice in Writing to the Authority setting out its proposals in relation to the Authority's request, including any adjustment to the Price which the Contractor considers to be appropriate. Once any negotiations between the Authority and the Contractor have been concluded in relation to any changes to the Goods, any changes (including any changes to the Price) shall take effect immediately. Notice of such a proposed variation will include details of the price which the Authority proposes should apply to the varied Goods.

23. Notices

- 23.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or at such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 23.2 If the notice is sent by post, registered post or by recorded delivery service, provided the notice is not returned as undelivered, the notice shall be deemed to have been received 2 Working Days after the day on which the notice was posted. If the communication is sent by e-mail or fax and, provided no error report is received by the party sending the e-mail or fax, the e-mail or fax shall be deemed to have been received when sent if sent between the hours of 10am and 4pm on a Working Day and if sent outwith these hours, it shall be deemed to have been received at 10am on the Working Day following when it was sent. If the notice is hand delivered, it shall be deemed to have been received when delivered if delivered between the hours of 10am and 4pm on a Working Day and if delivered outwith these hours, it shall be deemed to have been received at 10am on the Working Day following when it was delivered.

24. Dispute Resolution

- 24.1 The parties must attempt in good faith to result any dispute between them arising out of or in connection with the Contract.
- 24.2 Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existing, validity or termination which cannot be resolved in good faith, shall be determined by the appointment of a single arbitrator to be agreed between the parties, and failing agreement with 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by Scottish Arbitration Centre on the written application of either party. The seat of the arbitrator shall be in Scotland. The language used in the arbitral proceeding shall be English. Any arbitration under this Condition 24.2 is subject to the Arbitration (Scotland) Act 2010.

25. Environmental Policy

The Contractor shall not supply any Goods which may endanger the health of any person, will cause significant damage to the environment during manufacture, disposal or use, which consume a disproportionate amount of energy during

manufacture, use or disposal, which cause unnecessary waste, or which contain material derived from threatened species or environments.

26. Blacklisting

The Contractor must not commit any breach of the Employment Regulations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Authority to terminate the Contract.

27. General

- 27.1 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 27.2 The Contract constitutes the entire agreement between the Authority and the Contractor relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.
- 27.3 Nothing in these Conditions or the Contract shall be construed as creating a partnership or a contract of employment between the Authority and the Contractor.
- 27.4 The Contractor shall be responsible for the accuracy of all documentation and information supplied to the Authority by the Contractor in connection with the supply of the Goods and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein. The Authority shall decide in its sole discretion whether such documentation and information is accurate and if not, the amount of any extra costs occasioned by any discrepancies, errors or omissions therein.
- 27.5 The Contractor shall take reasonable steps, in accordance with good industry practice, to prevent any fraudulent activity by the Contractor (including its shareholders, members, directors and partners) and/or any Agent, in connection with the receipt of monies from the Authority. The Contractor shall notify the Authority immediately if it has reason to suspect that any such fraud has occurred or is occurring or is likely to occur.
- 27.6 Except otherwise expressly provided by the Contract, all remedies available to the Authority for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election to the exclusion of other remedies.
- 27.7 No waiver by the Authority of any breach of the Contract by the Contractor shall be considered as a waiver of any subsequent breach of the same or any other provision.

- 27.8 The provision of Conditions 10, 12, 16, 17, 18, 19, 20 and 24 shall continue in force indefinitely after termination of the Contract.
- 27.9 The Contract shall be governed by the laws of Scotland and the Contractor submits to the exclusive jurisdiction of the Scottish courts.

SCHEDULE (Data Protection)

Data Processing provision as required by Article 28(3) UK GDPR.

This Schedule includes certain details of the Processing of Personal Data in connection with the supply of Goods under this Contract:

Subject matter and duration of the Processing of Personal Data

The subject matter and duration of the Processing of Personal Data are [insert description here].

The nature and purpose of the Processing of Personal Data

[Include description here]

The type of Personal Data to be Processed

[Include list of data types here]

The categories of Data Subject to whom Personal Data relates

[Include categories of data subjects here]

The obligations and rights of the Authority

The obligations and rights of the Authority as the Data Controller are set out in Condition 16 of the Contract.