

Scotland Excel

General Conditions of Contract for Services

[Month][Year]

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A. Preliminaries

1. Definitions and Interpretation

- 1.1. The definitions and expressions in the Schedule to these General Conditions of Contract for Services shall apply to the Information and Instructions to Tenderers, the General Conditions of Contract, the Special Conditions of Contract, the Standard Terms of Appointment and any Purchase Order made under the Contract.
- 1.2. The definitions and expressions in the Schedule shall have the meaning given to them there with respect to the interpretation of the Contract except where the context otherwise requires.

2. Headings

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

3. Conflict with Special Conditions

In the event of any conflict between any Special Conditions of Contract and the other terms of the Contract, the terms of the Special Conditions of Contract shall prevail.

4. Contracting Authority

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

5. Capacity and Eligibility to Contract

- 5.1. The Service Provider confirms to the best of its knowledge that there are no restrictions of any kind which in any way affects its capacity to contract. If any such restrictions exist or arise, Scotland Excel shall have the option to terminate the Contract. The Service Provider shall indemnify Scotland Excel in full for any resulting loss.
- 5.2. Without prejudice to the immediately preceding Condition, the Service Provider confirms that, to the best of its knowledge:
 - 5.2.1. it has not been convicted of any of the offences detailed in Regulation 58(1);
 - 5.2.2. none of the grounds detailed in Regulations 58(3) or 58(8) apply to it, and
 - 5.2.3. it has not committed any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or Sections 137 and 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 or the

Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities,

as at the date of submission of its Tender Documents and undertakes to advise Scotland Excel if, at any time, subsequently during the term of the Contract, conviction of any said offence or the occurrence of any such ground or the committing of any such breach happens.

- 5.3. In the event of any breach of this Condition by virtue of such conviction, such occurrence or such committing, Scotland Excel shall have the option to terminate the Contract and the Service Provider shall indemnify Scotland Excel in full for any resulting loss.

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

Where Scotland Excel ascertains to its satisfaction that the Service Provider as a Tenderer has failed to comply with one or more requirements contained within the “Information and Instructions to Tenderers”, Scotland Excel shall be entitled at any time at its discretion to direct Renfrewshire Council to terminate the Contract all in terms of Condition 35.6 (Material Breach – Immediate Termination).

B. Duration and Procedures of Contract

7. Constitution and Duration of Contract

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

8. Standard Terms of Appointment

Any Purchase Order, and any Competitive Order, as specifically provided under Condition 9 placed under this Contract shall be subject to the Standard Terms of Appointment set out at Appendix 1.

9. Orders and mini competitions for Services

- 9.1. Where a Council requires to purchase Services through this Contract it may:
- 9.1.1. award its requirements in accordance with the terms laid down in the Contract without reopening competition; such an award shall be made on the Standard Terms of Appointment set out at Appendix 1; or
 - 9.1.2. where not all the terms for the proposed order are laid down in the Contract (including, for example and without prejudice to the foregoing generality, the circumstances set down in that part of the Information and Instructions to Tenderers relating to guidance on the use of the framework arrangement of which the Contract forms part), award its Competitive Order requirements following a Mini Competition Process

conducted to comply with the requirements of the Public Contracts (Scotland) Regulations 2015; or,

- 9.1.3. award its requirements partly by the method described in Condition 9.1.1. above and partly by the method described in Condition 9.1.2. above.
- 9.2. Where a Competitive Order is required under either Conditions 9.1.2 or 9.1.3, a Council, at its sole discretion, may instruct the carrying out of a Mini Competition Process in accordance with the provisions of Condition 9.3.
- 9.3. Prior to providing any Service Provider with a Competitive Order under the Contract the Council shall:
 - 9.3.1. where the Contract has been awarded in lots, identify the relevant lot that the Competitive Order requirement falls into;
 - 9.3.2. identify the Service Providers capable of providing the Competitive Order requirement within the relevant lot (hereinafter in this Condition referred to as “eligible Service Providers”);
 - 9.3.3. as required, supplement and refine the Conditions and vary the relevant award criteria set out in the Tender Documents, but only to the extent permitted by and to comply with the requirements of the Public Contracts (Scotland) Regulations 2015;
 - 9.3.4. invite eligible Service Providers within the relevant lot identified under Condition 9.3.2 above to participate in a Mini Competition Process for its Competitive Order requirement in accordance with the Public Contracts (Scotland) Regulations 2015 and in particular:
 - 9.3.4.1. make available to those eligible Service Providers, in accordance with Condition 9.3.4.2 below, an invitation which sets out the specific requirements for the Competitive Order and the Mini Competition Award Criteria;
 - 9.3.4.2. consult in writing with each eligible Service Provider and invite it to submit a tender in writing for each specific contract lot to be awarded within a specified time limit;
 - 9.3.4.3. set a time limit for the receipt of tenders which takes into account factors such as the complexity of the subject matter and the time needed to submit tenders; and
 - 9.3.4.4. require each eligible Service Provider to either submit a proposal in writing, in accordance with the Council’s requirements or decline the invitation to take part in the Mini Competition Process;
 - 9.3.5. apply the Mini Competition Award Criteria to determine which of the tenders submitted by the eligible Service Providers through the Mini

Competition Process is most economically advantageous and use this as the basis of its decision to award its requirements;

- 9.3.6. where the Council decides to make an award following a Mini Competition Process, place a Competitive Order with the successful eligible Service Provider which:
 - 9.3.6.1. states the requirements;
 - 9.3.6.2. identifies the contract lot or lots;
 - 9.3.6.3. states the Price payable in accordance with the Mini Competition Process submitted by the successful eligible Service Provider;
 - 9.3.6.4. incorporates the Conditions applicable to the Competitive Order as supplemented and refined as required; and
 - 9.3.6.5. contains the Standard Terms of Appointment set out in Appendix 1; and
- 9.3.7. advise the unsuccessful eligible Service Providers in writing as soon as reasonably practicable of its decision on the award of the Competitive Order.
- 9.4. The Service Provider agrees that all tenders submitted in relation to any Mini Competition Process pursuant to this Condition shall remain open for acceptance for ninety (90) days (or such longer period specified in the invitation to tender issued by the Council).
- 9.5. Notwithstanding the fact that the Council has followed the procedure set out above in Condition 9.3, the Council shall be entitled at all times to decline to make an award.
- 9.6. The prices offered by the Service Provider for Competitive Orders shall be either lower than or equivalent to the Price for the Services under the Contract. In no event shall the Council accept a price from a Service Provider in excess of the said Price. Where, due to the specification of the required services not being included in the Contract, it is not possible to offer prices on this basis, the Service Provider will provide the Council with a fair and reasonable offer in accordance with the requirements of the Mini-Competition Process held pursuant to this Condition.
- 9.7. No Purchase Order shall be made after the expiry date of the Contract, to ensure that the relevant terms and conditions of the Contract are validly applied to such Purchase Order.
- 9.8. Any Purchase Order for purchase of Services through this Contract may continue between the Service Provider and the Council notwithstanding the expiry or termination of this Contract, subject to the Law applying to the terms of such Purchase Order.

10. Unauthorised Supply or Provision of Services

The Service Provider shall neither supply nor provide any Services without first receiving a Purchase Order for such Services from an Authorised Officer of a Council. Neither Scotland Excel nor a Council shall be liable for the cost of any Services delivered, supplied or provided if the Services are not covered by the prior issue of a Purchase Order.

C. Contract Operation

11. Obligation to Conform

It shall be an essential condition of the Contract that the Service Provider binds and obliges itself to adhere fully to the Conditions throughout the term of the Contract including performing the Contract in accordance with the Law (which includes environmental, social and employment law for the avoidance of doubt), Good Industry Practice and the Standards and to provide the Services in accordance with any Purchase Order, complying in full with the Standard Terms of Appointment and the Conditions as they may be supplemented and refined for the purposes of such a Purchase Order to the satisfaction of any party placing such a Purchase Order under the Contract.

12. Compliance with Law, Good Industry Practice and Standards

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

12.2. [Not used]

13. Pricing and payment

13.1. Unless otherwise provided or stated, all Prices shall be stated in pounds sterling and will be regarded as firm Prices for the duration of the Contract period and be strictly nett Prices, exclusive of Value Added Tax. Prices will be deemed to include an allowance for all matters in respect of safety, health and welfare and the conditions of employment of employees and all matters relating to the satisfactory execution of the Contract and for Insurance of items against loss or damage by fire or by any other cause and against injury to persons and damage to property arising out of or in the course of or caused by the carrying out of the Services involved in this Contract.

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

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

- 13.4. Where the Service Provider enters into a sub-contract for the purpose of performing the Contract, the Service Provider shall cause a term to be included in such sub-contract:
- 13.4.1. which requires payment to be made to the Sub-Contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements and provides that, for the purpose of payment alone, where the Council has made payment to the Service Provider and the Sub-Contractor's invoice includes Services in relation to which the payment has been made by the Council then, to the extent that it relates to such Services, the invoice shall be treated as valid and payment shall be made to the Sub-Contractor without delay or deduction;
 - 13.4.2. which notifies the Sub-Contractor that the contract forms part of a larger contract for the benefit of Scotland Excel and that should the Sub-Contractor have any difficulty in securing the timely payment of an invoice that matter may be referred by the Sub-Contractor to Scotland Excel; and
 - 13.4.3. for any subcontract for the purposes of performing the Contract, a provision is included in the same terms as that set out in this Condition 13 (including for the avoidance of doubt this Condition 13.4.3) subject only to modification to refer to the correct designation of the equivalent party as the Service Provider and Sub-Contractor as the case may be.

14. BACS (Banks Automated Clearing Service)

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

15. Fluctuating offers

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

16. Market Testing

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

- 16.2. If a more competitive pricing is obtained, the Service Provider shall be afforded the opportunity to improve the pricing offered by it under the Contract in order to match or better the pricing from the alternative source.
- 16.3. Scotland Excel shall not be obliged to disclose to the Service Provider the identity of any service provider which has provided pricing as part of its testing of the market.

17. Performance and Management of the Service

- 17.1. The Service Provider shall perform its obligations, and ensure that any Sub-Contractor performs its obligations:
 - 17.1.1. in accordance with the terms of the Contract and each Purchase Order;
 - 17.1.2. with appropriately experienced, qualified and trained personnel and with all due skill, care and diligence;
 - 17.1.3. in accordance with the Law, Good Industry Practice and Standards;
 - 17.1.4. in complete and continuous compliance with the obligations relating to Insurance; and
 - 17.1.5. where applicable, with materials conforming to all terms of the Contract.
- 17.2. The Service Provider shall properly manage and monitor performance of the Contract and shall inform Scotland Excel immediately if any aspect of the Contract is not, or is not capable of being, performed.
- 17.3. The Service Provider shall provide all the necessary facilities, materials and equipment and suitably qualified and experienced personnel to perform the Contract.
- 17.4. The Service Provider shall produce such evidence as Scotland Excel on behalf of the Councils may reasonably require to satisfy Scotland Excel that the Contractor has complied with this Condition.

18. Service Provider's Personnel

- 18.1. The Service Provider shall provide full particulars as required by Scotland Excel of all persons who are or who may at any time be employed on the Contract. The Service Provider shall take all reasonable steps to avoid changes of staff performing the Contract and shall provide Scotland Excel with one (1) Month's written notice and full particulars of any proposed additional or replacement staff. At any time, Scotland Excel may give notice to the Service Provider that a person is not to become or be involved further with the performance of the Contract. The decision of Scotland Excel regarding the Service Provider's personnel shall be final and conclusive. The Service Provider shall act immediately on receipt of such

notice to comply with such notice, including, taking all necessary steps to avoid unauthorised persons from gaining access to the Council's Premises.

19. Management Information

- 19.1. Scotland Excel shall require, and a Council may require within a Call-off, management information relating to the Contract on a quarterly basis from the commencement date of the Contract.
- 19.2. The Service Provider must provide the management information to Scotland Excel in the template that will be provided to the Service Provider at the mobilisation stage of the Contract. This template may contain a selection of types of management information including Contract information; Service Provider information; Council information; item / Services information; Call-off information; and Service Provider performance information.
- 19.3. The Service Provider must provide to Scotland Excel the information requirements stated Conditions 19.1 and 19.2 on a quarterly basis in accordance with the following schedule:
 - 19.3.1. 1 January to 31 March Information, must be provided no later than 15 April;
 - 19.3.2. 1 April to 30 June Information, must be provided no later than 15 July;
 - 19.3.3. 1 July to 30 September Information, must be provided no later than 15 October; and
 - 19.3.4. 1 October to 31 December Information, must be provided no later than 15 January.
- 19.4. Data supplied by the Service Provider under this Condition must cover all spend by all parties entitled to use the Contract.
- 19.5. As set out in their Call-offs, the Councils may require all or any of the abovementioned types of management information, or any other management information, to be provided to them by the Service Provider at any time interval required.

20. Community Benefit Requirement information

- 20.1. Scotland Excel shall require, and a Council may require within a Call-off, information relating to any:
 - 20.1.1. Community Benefit Requirements; and
 - 20.1.2. community benefits, similar to Community Benefit Requirements, but which are being provided voluntarily under the Contract by the Service Provider.
- 20.2. The Service Provider must provide this Community Benefit Requirement information to Scotland Excel in the template, that will be provided to the Service

Provider at the mobilisation stage of the Contract, and in accordance with the following schedule:

- 20.2.1. 1 April to 30 September Information, must be provided no later than 31 October; and
 - 20.2.2. 1 October to 31 March Information, must be provided no later than 30 April.
- 20.3. Data supplied by the Service Provider under this Condition must cover all spend by all parties entitled to use the Contract.

21. Key Performance Indicators

- 21.1. To ensure that the Contract provides the agreed benefits and value to the Councils, it will be managed and monitored by Scotland Excel and the Service Provider according to the four key performance indicator areas of cost, quality, service and sustainability.
- 21.2. To monitor a Service Provider's performance in cost, the key performance indicators that may be used may include, but are not limited to, any indicator covering: pricing stability; conformance to the agreed pricing terms; invoice accuracy; and any innovative solutions to cost reductions.
- 21.3. To monitor a Service Provider's performance on quality, the key performance indicators that may be used may include any indicator covering: fitness for purpose of the Service(s) specified and listed in each lot; returns; and substitutions.
- 21.4. To monitor a Service Provider's performance on service, the key performance indicators that may be used may include any indicator covering: successful provision of Services to the required lead time, with specific reference to on time provision and accuracy of provision; effective and responsive account management; complaints (including in relation to poor or inadequate service); general communications; and the provision of accurate and on time management information.
- 21.5. To monitor a Service Provider's performance on sustainability, the key performance indicators that may be used may include any indicator covering: corporate and social responsibility; waste minimization; continual improvement; and innovation in services.
- 21.6. The key performance indicators and minimum performance levels will be set by Scotland Excel, following discussion with the Service Provider, at contract implementation stage and thereafter monitored by the parties to the Contract during the period of the Contract. To enable effective management of the Contract, accurate and on time management information shall be required in accordance with Conditions 20 and 21.

22. Account Management

- 22.1. The Service Provider must proactively and positively manage the relationship with Scotland Excel and the Councils, providing support and ideas to enable the Councils to gain maximum value from the Services under the Contract.
- 22.2. It is a requirement of the Contract that a robust account management structure, providing knowledgeable and trained staff acquainted with the subject matter of the Contract, is put in place before the commencement date of the Contract to ensure the efficient and effective supply of the Services. Detailed information identifying any account manager and designated staff to manage the account relating to the Contract, including name, address, position, contact telephone numbers and email address must be passed to Scotland Excel within seven (7) days of appointment. Any account manager appointed to manage the Contract must have previous experience of dealing with accounts of the scale of the Contract and accounts for the Services. The account manager shall be responsible for the day to day supervision of the account, making sure that there are sufficient resources from the Service Provider to provide the Services and any associated service to meet the Conditions.
- 22.3. The account manager shall visit Scotland Excel and its Councils regularly by prior arrangement to give advice and assistance in identifying suitable services and solutions to meet individual Council requirements and to resolve any issues which may arise as a result of the provision of inadequate Services.
- 22.4. The account manager will be required to attend meetings with Scotland Excel as and when required, but typically regular review meetings will be scheduled on a quarterly, six monthly or annual basis, to discuss the Contractor's performance in fulfilling its obligations, including developing the use by the Councils of the Contract. Throughout the period of the Contract Scotland Excel and the Councils shall review, at no less than six monthly intervals, the need for additional account managers and meetings to ensure the proper performance of the Service Provider's obligations. The Service Provider shall be obliged to comply with the reasonable demands of Scotland Excel and the Councils regarding the holding of meetings and appointment of an additional account manager or managers.
- 22.5. [Not used]

23. Variations

Variation of Contract Conditions

- 23.1. Unless otherwise provided, the Conditions may only be varied with the prior written agreement of Scotland Excel and the Service Provider.
- 23.2. No terms or conditions put forward at any time by the Tenderer or the Service Provider shall form any part of the Contract unless specifically agreed in writing by Scotland Excel.

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

Variation of Contract – Changes to Contract Requirements

- 23.4. Each party (the “proposing party”) shall be entitled to propose any variation to the Contract for consideration in relation to the Contract requirements. Any such variations could include, but shall not be restricted to, additions, alterations, substitutions or omissions to the Services or changes regarding provision of the Services.
- 23.5. The proposing party shall notify the other party in writing of its proposal. If the proposing party is Scotland Excel, the Service Provider shall confirm in writing within two (2) Weeks of receipt of the proposal the effect the variation shall have on the Contract including any effect on the Price or Prices payable for the Services.
- 23.6. To consider any proposed variation, both parties shall have available to them:
- 23.6.1. the reason for the proposed change;
 - 23.6.2. full details of the proposed change;
 - 23.6.3. the effects on the Price, if any, of the proposed change; and
 - 23.6.4. details of the likely impact, if any, of the proposed change on other aspects of this Contract.
- 23.7. The other party shall respond to the proposed change in writing and, if appropriate, representatives of both parties shall meet to discuss the proposed change.
- 23.8. Any change proposed by either party shall constitute an amendment to this Contract only once it has been accepted in writing by both parties. Until such time, the proposed change shall be neither binding nor implemented. Any work undertaken by the Service Provider, its staff or agents in connection with any proposed change to this Contract shall be undertaken entirely at the expense and liability of the Service Provider.
- 23.9. No consent shall be given under these Conditions 23.4 to 23.8 if the change is proposed by the Service Provider and does not comply with the requirements of the Regulations, in particular, Regulation 72.

24. Mistakes in Information

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

25. Complaints and Escalation Procedure

- 25.1. The Service Provider must ensure that it has a procedure for the handling of Council complaints. The procedure must include the following provisions:

- 25.1.1. prompt recording of the complaint;
- 25.1.2. acknowledgement of the receipt of the complaint together with written advice as to how the complaint is to be dealt with no later than two (2) Working Days after the receipt of the complaint;
- 25.1.3. a process to escalate responding to the complaint to senior levels of management within the Service Provider where the Council acting reasonably takes the view that the complaint is not being properly dealt with; the escalation process shall provide that regular contact with the Council is to be maintained by the Service Provider until the issue giving rise to the complaint is resolved to the Council's reasonable satisfaction; and
- 25.1.4. arrangements for resolution of complaints that may affect the overall operation of the Contract.

26. Change in Status of Service Provider (Assignment, Subcontracting, Change of Control)

- 26.1. No part of the Contract will be subcontracted or assigned by the Service Provider without the prior written consent of Scotland Excel. Any breach hereof shall entitle Scotland Excel to determine the whole Contract or that part to which the breach relates or take any other remedies available. The agreement by Scotland Excel to any assignment or subcontracting of the Contract whether in whole or in part shall not relieve the Service Provider of the Service Provider's liabilities under the Contract.
- 26.2. Notwithstanding the terms of Condition 26.1 above of this Contract, the Service Provider may assign to another person (an "assignee"):
 - 26.2.1. the right to receive payment of all sums or any part thereof due to the Service Provider under this Contract subject to deduction of sums in respect of which the Council exercises its right of recovery under Condition 33 of this Contract; and
 - 26.2.2. all the related rights of the Service Provider under this Contract in relation to the recovery of sums due but unpaid.
- 26.3. The Service 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. In the absence of such notification the Council shall be under no obligation to vary its arrangements for payment of the Price or for the handling of invoices.
- 26.4. Where a change in the Control of a Service Provider occurs, Scotland Excel shall be entitled to consider whether the Service Provider remains suitable and eligible to perform the obligations under the Contract and whether its consent to the change in Control may be given so that Scotland Excel and the Service Provider

remain compliant with the Law. Scotland Excel shall not withhold or delay its consent unreasonably subject to:

- 26.4.1. the Service Provider's compliance with Condition 26.5;
 - 26.4.2. Scotland Excel's compliance with its procedural requirements permitting assignment; and,
 - 26.4.3. compliance by all parties to the change in Control with the Law.
- 26.5. If the Service Provider wishes to subcontract, assign or otherwise dispose of the benefit or the burden of the Contract or any part thereof or to agree to a change in Control, the Service Provider shall intimate to Scotland Excel no later than 60 days before the change in status is to take effect the name of the proposed party or parties involved and the nature of the change and thereafter shall provide all information that Scotland Excel may need to consider the Service Provider's request.
- 26.6. The Service Provider shall promptly notify Scotland Excel in writing of:
- 26.6.1. any material detrimental change in the financial standing or credit rating or both of the Service Provider; and/or,
 - 26.6.2. any circumstances suggesting that a change in the Control of the Service Provider is planned or in contemplation, provided such notification does not contravene the Law.
- 26.7. Upon receipt of notice of a Change in Control which Scotland Excel reasonably considers will materially and adversely affect the provision of the Service by the Service Provider, the Service Provider's participation in the Contract may be terminated.
- 26.8. Where the Service Provider is subject to Part 28 of the Companies Act 2006 and this restricts the ability of the Service Provider to comply with the requirements of this Condition, the relevant provisions in this Condition will not apply subject to the Service Provider's compliance with the following requirements:
- 26.8.1. the Service Provider must notify Scotland Excel promptly of the position in writing and provide such further information as may be reasonably required by Scotland Excel;
 - 26.8.2. in disclosing information in accordance with this Condition, the Service Provider must adhere to the requirements of all applicable legislation, including without limitation, the Companies Act 2006 and the City Code on Takeovers and Mergers ("the City Code"); and
 - 26.8.3. copies of any disclosures made in accordance with the requirements of the aforementioned Part 28 of the Companies Act 2006, the City Code and the Law must be provided to Scotland Excel at the time of issue.

- 26.9. Where the Service Provider has failed to comply with the requirements of this Condition 26 or Scotland Excel has decided that it cannot give its consent to the proposed assignation or subcontracting or the continuation of the Contract following the change in Control, Scotland Excel shall be entitled, acting reasonably, to terminate the Contract under Condition 35.
- 26.10. No consent shall be given under this Condition 26 if the change proposed by the Service Provider does not comply with the requirements of the Regulations, in particular, Regulation 72.

27. Closure or Substantial Reconfiguration of Service

- 27.1. The Service Provider shall give Scotland Excel thirteen (13) Weeks' written Notice of its intention to close or substantially reconfigure the Service.

28. Access for Inspection of the Service Provider's Premises and Documentation

- 28.1. Following award of the Contract, the Service Provider shall permit representatives of Scotland Excel and any Council, following the giving of reasonable notice, except in cases of urgency, to have access to any of its premises to inspect such premises to ensure that they are fit for the purposes of the Contract, that they comply with the Conditions, the Law, Good Industry Practice and the Standards and to permit the representatives to carry out external quality audits and assessments of the Service Provider.
- 28.2. Separately, the Service Provider is obliged throughout the duration of the Contract to make available on request to Scotland Excel and any Council all available documentation to substantiate its compliance with the Conditions, the Law, Good Industry Practice and the Standards or any other requirements of the Contract relating to quality assurance and assessment of the Service Provider's performance of its obligations under the Contract.

29. Disruption

- 29.1. The Service Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of Scotland Excel and/or the Council, their employees or any other Service Provider employed by Scotland Excel and/or the Council.
- 29.2. The Service Provider shall immediately inform Scotland Excel of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 29.3. In the event of industrial action by its staff, the Service Provider shall seek approval to its proposals to continue to perform its obligations under the Contract.

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

30. Audit

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

31. Scotland Excel Logo

The Service Provider must not use the Scotland Excel logo used by the joint committee operating under the name of Scotland Excel or disclose any details of any relationship with Scotland Excel to any other party without the prior written consent of Scotland Excel.

32. Advertising & Marketing Information

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

D. Remedies

33. Recovery of Sums Due

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

34. Suspension

- 34.1. Scotland Excel may suspend the Service Provider's participation in the Contract where:
- 34.1.1. in the reasonable opinion of Scotland Excel, a breach or material breach by the Service Provider creates an immediate or serious diminution of quality in the performance of the Service Provider's obligations to below the requirements set out in the Tender Documents;
 - 34.1.2. in the reasonable opinion of Scotland Excel, the Service Provider has failed to timeously implement any remedial action plan agreed with Scotland Excel;
 - 34.1.3. a Service Provider has failed to provide notice of assignation, sub-contracting, change of Control, or closure or substantial reconfiguration of the Service;

- 34.1.4. a Service Provider has provided notice of assignment, sub-contracting, change of Control, or closure or substantial reconfiguration of the Service and Scotland Excel has serious concerns about the viability of the arrangement;
 - 34.1.5. the Service Provider or Scotland Excel has given notice of termination; or
 - 34.1.6. in the reasonable opinion of Scotland Excel, the Service Provider is in material breach in accordance with Condition 35 (Breach and Termination) herein.
- 34.2. Once a decision has been taken to exercise suspension, Scotland Excel will:
- 34.2.1. notify the Service Provider in writing of the reason for the suspension and the date the suspension takes effect; and
 - 34.2.2. notify the Councils of the suspension.
- 34.3. During any period of suspension:
- 34.3.1. the Service Provider must continue to co-operate with and comply promptly with any reasonable requirements of Scotland Excel;
 - 34.3.2. current Purchase Orders may continue subject to the Council being satisfied that the Service Provider has and will continue to perform the obligations stipulated in the relevant Purchase Order;
 - 34.3.3. Scotland Excel shall use reasonable efforts to ensure that no further Purchase Orders are referred to the Service Provider; and
 - 34.3.4. following receipt of notification in accordance with this Condition 34 the Service Provider will notify Scotland Excel of the current Purchase Orders made by the Councils and any such further information as may be reasonably required by Scotland Excel.
- 34.4. Scotland Excel and the relevant Councils will work together with the Service Provider to ensure there is no interruption to current Purchase Orders, and to address the issues that led to the suspension, and the Service Provider shall co-operate fully with Scotland Excel and the Councils.
- 34.5. During the period of suspension, Scotland Excel will keep the Service Provider informed of its assessment of what progress the Service Provider has made in addressing the issues that led to suspension and the likely duration of the suspension.
- 34.6. Withdrawal of the notice issued in accordance with Condition 34.2 will be confirmed by Scotland Excel if and at such time as it becomes reasonably satisfied that the Service Provider is able to and will perform its obligations under the Contract to the required standard.

- 34.7. Notwithstanding the use of Scotland Excel's powers of suspension under this Condition 34 Scotland Excel shall be entitled to take into account the occurrence and the resolution of the circumstances falling within this Condition 34 in its assessment of the Service Provider's overall performance and to exercise its powers to terminate the Contract under Condition 35 (Breach and Termination).

35. Breach and Termination

- 35.1. The Service Provider shall give notice to Scotland Excel as soon as reasonably practicable if it finds it is unable permanently or temporarily to meet the Conditions.

Material breach – Capable of Remedy

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

Material breach – Irremediable

- 35.3. Without prejudice to the rights and remedies for breach or material breach of the Contract otherwise available to them under the Contract or at common law or under statute and without prejudice to Scotland Excel's obligations under the Contract, Scotland Excel and the Service Provider shall each have the right, such right being exercised reasonably, to serve written notice on the other party to terminate the other party's participation in the Contract if the other party has committed a material breach of this Contract which is not capable of remedy, or if capable of remedy, has not been remedied to the reasonable satisfaction of the party serving the notice within the period specified in the notice.
- 35.4. Where material breach occurs as defined in this Condition 35, termination may take effect immediately, or within such alternative period as the parties shall mutually agree.

Material breach - Definition

- 35.5. Each of the following is a material breach of the Contract by either party:
- 35.5.1. a breach of any of its obligations under this Contract which materially and adversely affects the performance of the Contract or the purchase of Services under the Contract; or,
 - 35.5.2. a series of breaches of any of its obligations under the Contract, the cumulative effect of which is to seriously and adversely affect the performance of the Contract or the purchase of Services under the Contract.

Material breach – Immediate Termination

- 35.6. Each of the following is a material breach entitling the party not in breach to terminate the Contract immediately:
- 35.6.1. a breach by the Service Provider in terms of Condition 6 (Failure to comply with requirements in “Information and Instructions to Tenderers”), Condition 45 (Data Protection and Information Security) or Condition 46 (Confidentiality);
 - 35.6.2. a breach by either party in terms of Condition 53 (Prevention of Corruption) or Condition 54(Prevention of Fraud); or
 - 35.6.3. the Service Provider, at any time during the period of the Contract, is in one of the situations referred to in Regulation 58(1) (Exclusion grounds), including as a result of the application of Regulation 58(2).

All other breaches

- 35.7. Where either Scotland Excel or the Service Provider considers the other to be in non-material breach of the Contract, the party not in breach will be required to notify the details of the breach to the other party who shall use all reasonable endeavours to rectify the breach within fourteen (14) days of notification of the breach.
- 35.8. Further to and without prejudice to Condition 35.1, where the Service Provider is unable to meet the Conditions only temporarily, the parties may agree an action plan setting out the failings in performance and their remedies together with the firm timescales for putting in place and maintaining those remedies. Where there is a failure by the parties to agree an action plan or a failure on the part of the Service Provider to meet the Conditions in accordance with the agreed action plan, Scotland Excel may treat either form of failure as a material breach which is not capable of remedy, entitling Scotland Excel to terminate the Contract under Conditions 35.3 and 35.4 above.

Termination of the Contract under Regulation 73

- 35.9. In addition to any of its other rights to terminate the Contract, Scotland Excel shall have the right to terminate the Contract where:-
- 35.9.1. the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) (modification of contracts during their term);
 - 35.9.2. the Service Provider has, at the time of contract award, been in one of the situations referred to in Regulation 58(1) (exclusion grounds), including as a result of the application of Regulation 58(2), and should therefore have been excluded from the procurement procedure; or
 - 35.9.3. the Contract should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the Treaties and the Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

- 35.10. Scotland Excel shall give notice of termination to the Service Provider in writing and termination shall take effect as follows:
- 35.10.1. where in the opinion of Scotland Excel, the issue giving rise to the exercise of the right to terminate under this Condition is sufficiently serious, with immediate effect; and
 - 35.10.2. in any other case, on the date specified in the notice which shall be no less than thirty (30) days from the date on which the notice was given.
- 35.11. Where Scotland Excel has terminated the Contract under Conditions 35.9 and 35.10 the Service Provider shall have no right of compensation except where it is established that Scotland Excel has acted or omitted to act negligently and this shall be the Service Provider's only remedy.

General provisions applying to termination of the Contract

- 35.12. Where the Service Provider receives notice of termination of its participation in the Contract, it must take the following action as soon as possible and no later than the expiry date of said notice:
- 35.12.1. all information provided to the Service Provider by Scotland Excel must be returned in whatever format the Parties shall agree, or destroyed by the Service Provider which shall certify its destruction to Scotland Excel at the request of Scotland Excel; and
 - 35.12.2. the Service Provider must provide to Scotland Excel an updated report relative to the monitoring information sought in accordance with Conditions 17 (Performance and Management of the Service), 19 (Management Information), 20 (Community Benefit Requirement information), 21 (Key Performance Indicators) and 22 (Account Management) in such format as Scotland Excel may determine.
- 35.13. The termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of any party accrued prior to termination (subject as otherwise expressly provided in this Contract). Those rights shall include the right of Scotland Excel or the Council or the Service Provider, as the case may be, to claim damages against the other party arising out of that party's material breach of the Contract. The Conditions of this Contract which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 35.14. Nothing in this Condition shall limit the nature and extent of acts considered by a court of law or otherwise to be material breaches of this Contract. No granting of time or period of notice under this Condition shall be deemed to be a waiver of any right the party granting time or giving notice may have against the other party in respect of the other party's material breach of this Contract.
- 35.15. The Service Provider agrees that upon termination for any reason or expiry of the Contract it shall not be entitled to make a claim against Scotland Excel in relation to costs howsoever incurred by the Service Provider in securing the award of the

Contract or providing the Services under the Contract nor in relation to the loss of expected profits from the provision of Services under the Contract since, with regard to the loss of expected profits, there can be no legitimate expectation under the Contract with no commitment to purchase or guarantee of the level or existence of business.

36. Insolvency

- 36.1. Without prejudice to any other rights of Scotland Excel or the Councils, Scotland Excel shall have the right to terminate the Contract by written notice immediately where:
- 36.1.1. the Service Provider is a company and passes a resolution for winding-up or dissolution (other than for, and followed by, an amalgamation or reconstruction), or an administrator, administrative receiver, receiver or manager, liquidator or provisional liquidator is appointed in terms of statute by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge, or the company makes a composition or arrangement with its creditors, or the court makes an administration order or a winding-up order, or the company is made subject of a Debt Arrangement Scheme or the company is struck off in accordance with the Law;
 - 36.1.2. the Service Provider is an individual and is apparently insolvent or a petition is appointed for the Service Provider's bankruptcy or for the sequestration of his estate or the Service Provider makes a composition, conveyance or assignment or any arrangement with or for the benefit of creditors, or a trustee or administrator is appointed to manage his affairs;
 - 36.1.3. the Service Provider is a firm or a number of persons acting together in any capacity and a petition is presented for the Service Provider to be wound up as an unregistered company, or if any of the events in Conditions 36.1.1 and 36.1.2 of this Condition occur in respect of the firm or any partner or any of those persons; or,
 - 36.1.4. any event similar to those listed in 36.1.1, 36.1.2 or 36.1.3 above occurs under the Law of this or any other jurisdiction.

37. Remedies Cumulative

Except as otherwise expressly provided by the Contract, all remedies available to either party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

38. Dispute Resolution

- 38.1. The parties to the Contract shall attempt in good faith and in a spirit of mutual trust and co-operation to negotiate a settlement to any dispute between them arising

out of or in connection with the Contract within twenty (20) Working Days of either party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the director of Scotland Excel and to the finance director (or equivalent) of the Service Provider.

38.2. Nothing in this Condition shall:

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

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

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

E. General Legal Conditions and Governing Law

39. Liability, Indemnity and Insurance

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

39.1.1. death or personal injury caused by its negligence or that of its staff, Sub-Contractors or agents;

39.1.2. fraud or fraudulent misrepresentation by it or its staff;

39.1.3. any breach of any obligations implied by the Law governing the provision of the Goods or Services;

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

39.1.5. any claim under the indemnity in Condition 51 (Intellectual Property Rights) or in respect of any claim under Condition 48 (Indemnity regarding Data Protection and Information Security and Confidentiality); or,

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

39.2. Subject to Conditions 39.3 and 39.4, the Service Provider shall indemnify and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of:

39.2.1. the provision, or late or purported provision, of the Services or the performance or non-performance by the Service Provider of its obligations under the Contract, including for the avoidance of doubt

its obligations under any Call-off, or the presence of the Service Provider or any staff on the Premises, including in respect of any death or personal injury;

- 39.2.2. loss of or damage to property;
- 39.2.3. financial loss arising from any advice given or omitted to be given by the Service Provider; or
- 39.2.4. any other loss which is caused directly or indirectly by any act or omission of the Service Provider.

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

39.3. [Not used].

39.4. Subject to Condition 39.1, in no event shall either party be liable to the other for any:

- 39.4.1. loss of profits;
- 39.4.2. loss of business;
- 39.4.3. loss of revenue;
- 39.4.4. loss of or damage to goodwill;
- 39.4.5. loss of savings (whether anticipated or otherwise); and/or,
- 39.4.6. any indirect or consequential loss or damage.

39.5. The Council may, amongst other things, recover as a direct loss:-

- 39.5.1. any additional operational and/or administrative expenses arising from the Service Provider's Default;
- 39.5.2. any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Service Provider's Default; and
- 39.5.3. the additional cost of procuring replacement services for the remainder of the period following termination of the Contract as a result of a Default by the Service Provider.

39.6. Nothing in the Contract shall impose any liability on the Council in respect of any liability incurred by the Service Provider to any other person, but this shall not be taken to exclude or limit any liability of the Council to the Service Provider that may arise by virtue of either a breach of the Contract, or by negligence, on the part of the Council, or the Council's employees, servants or agents.

- 39.7. The Service Provider shall effect and maintain with a reputable insurance company a policy or policies of Insurance providing an adequate level of cover in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such Insurance shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider. Such Insurance shall be maintained for the duration of the period of the Contract and for a minimum of five (5) years following the expiration or earlier termination of the Contract. Without prejudice to the foregoing obligations, the Service Provider shall effect and maintain Insurance cover as follows:-
- 39.7.1. Employers' Liability Insurance – in accordance with Regulation 3 of the Employers' Liability (Compulsory Insurance) Regulations 1998 to a minimum indemnity limit of £10 million each and every occurrence;
 - 39.7.2. Public/Products Liability Insurance – to a minimum indemnity limit of £5 million each and every occurrence and in the aggregate in respect of Products Liability Insurance; and
 - 39.7.3. Motor Vehicle Insurance - in accordance with the provisions of the current Road Traffic Act 1988 to a minimum indemnity limit of £10 million each and every occurrence; and
 - 39.7.4. [Not used]
- 39.8. The Service Provider shall give the Council, on request, copies of all Insurance policies referred to in this Condition or a broker's verification of Insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 39.9. If, for whatever reason, the Service Provider fails to give effect to and maintain the Insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 39.10. The provisions of any Insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Contract. It shall be the responsibility of the Service Provider to determine the amount of Insurance cover that will be adequate to enable the Service Provider to satisfy any liability referred to in Condition 39.2.
- 39.11. Notwithstanding the minimum Insurance requirements to participate in the Contract as set down in this Condition, due to the nature of some of the Services, the Council may decide to increase the minimum Insurance requirements at the point of a Call-off. In these circumstances the Service Provider will be allowed the opportunity to arrange to increase its Insurance cover to the level stipulated by the Council and to reflect the increased cost (if any) to provide the Services in meeting the increased requirement.

40. Health and Safety

- 40.1. The Service Provider must operate health and safety policies and must perform the Contract in accordance with all current health and safety legislation. If requested by Scotland Excel, the Service Provider shall provide Scotland Excel with a copy of its health and safety policy statement.
- 40.2. Scotland Excel must be notified immediately by the Service Provider of any risks to health or safety which are identified or arise during the Contract including any known misuse or abuse of any Services provided.
- 40.3. The Service Provider shall comply with any health and safety measures implemented by a Council in respect of that Council's premises and shall notify the Council immediately of any incident occurring which causes or is likely to cause any personal injury or damage to property.
- 40.4. The Service Provider shall notify a relevant Council of any health and safety hazards which may exist or arise at the Service Provider's premises which may affect the Service Provider's performance of its duties under the Contract.

41. Ethical Requirements

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

42. Protection of Vulnerable Groups (Scotland) Act 2007

- 42.1. Where the Contract requires the Service Provider, his employees or agents to undertake "Regulated Work" as defined in Section 91 of the Protection of Vulnerable Groups (Scotland) Act 2007 ("the PVG Act"), the Service Provider shall ensure that he complies with all of the relevant requirements, including the establishment of and adherence to effective procedures, of the PVG Act.
- 42.2. For the supply of the Services which fall outside of the scope of Regulated Work under the PVG Act, the Service Provider shall obtain the appropriate level of Disclosure directly from Disclosure Scotland.
- 42.3. The appropriate level of Disclosure shall be determined by reference to Part V of the Police Act 1997 and, for the avoidance of doubt, by reference to any regulations made under that Act and guidance issued by Disclosure Scotland.
- 42.4. The Service Provider shall use the findings of the Disclosure as part of the process to make recruitment decisions and such suitable arrangements as are necessary for the safeguarding and protection of the interests of all persons falling within the

definition of a child or protected adult as set down in Sections 97 and 94 respectively of the PVG Act. Where the Disclosure shows that the subject of the Disclosure has convictions, reprimands, warnings, cautions or any other relevant information, the Service Provider shall conduct a risk assessment and use that assessment to protect the interests of all persons falling within the definition of a child or protected adult as set down in Sections 97 and 94 respectively of the PVG Act including without prejudice to the foregoing generality, prohibiting the subject of the Disclosure from being involved in the supply of the Services to all persons falling within the definition of a child or protected adult as set down in Sections 97 and 94 respectively of the PVG Act.

- 42.5. The Service Provider shall recheck the status of their existing employees, agents and anyone else involved in the supply of the Services not less than every three (3) years in order to ensure that their Disclosure is up-to-date.
- 42.6. To ensure compliance with the requirements of this Condition and subject to the written consent of the subject of the Disclosure, the Service Provider subject to the Law will share the findings of the Disclosure with the Council on request.

43. Equality

- 43.1. The Service Provider hereby confirms that to the best of its knowledge and belief it has complied with the Law and Guidance relating to equalities, including without limitation the Equality Act 2010 (referred to in this Condition as the "Act") and hereby agrees to continue to comply with the Act in a manner which is proportionate and relevant to the nature of the Contract.
- 43.2. The Service Provider agrees to perform its obligations under the Contract in a non-discriminatory manner and shall promote equality and work towards reflecting best practice as identified in Guidance including the relevant Codes of Practice issued by the Equality and Human Rights Commission.
- 43.3. The Service Provider may be subject to the requirements of the equality duty under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 in respect of the obligations under the Contract and any Call-off entered into thereunder. Where the requirement to comply with this equality duty exists, compliance with the requirements contained in Conditions 43.1 to 43.4 and Condition 43.10 herein will be evidence to Scotland Excel of the Service Provider meeting this requirement.
- 43.4. The Service Provider recognises that Scotland Excel has a responsibility to monitor the extent to which the performance of the Contract extends to socially excluded groups. In recognition of this, the Service Provider agrees, where appropriate and practicable, to work towards providing information to Scotland Excel in relation to employment and provision of the Service in respect of the protected characteristics as detailed in the Act, Part 2 Chapter 1.
- 43.5. The Service Provider shall not discriminate, directly or indirectly or by way of victimisation or harassment against any person on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation contrary to the Act.

- 43.6. The Service Provider shall notify Scotland Excel forthwith in writing as soon as it becomes aware of any investigation of, or proceedings brought against, the Service Provider under the Act. The Service Provider will inform Scotland Excel of any investigation decision or outcome of any proceedings as soon as practical upon receipt of said decision or outcome being made. For the avoidance of any doubt, this is in addition to the reporting requirements.
- 43.7. Where any such investigation is undertaken by a person or body empowered to conduct such investigation, and/or proceedings are instituted in connection with any matter relating to the Service Provider's performance of its obligations under the Contract being in contravention of the Act, the Service Provider shall free of charge:
- 43.7.1. provide any information requested in the timescales allotted unless to do so would be contrary to the Law;
 - 43.7.2. attend any meetings as required and permit the Service Provider's staff to attend;
 - 43.7.3. promptly allow access to and investigation of any document or data deemed to be relevant;
 - 43.7.4. allow itself and any Service Provider's staff to appear as witness in any ensuing proceedings; and
 - 43.7.5. co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 43.8. Where any such investigation is conducted or proceedings are brought under the Act which arise directly or indirectly out of any act or omission of the Service Provider, its agents, Sub-Contractors or staff, and where there is a finding against the Service Provider in such investigation or proceedings, the Service Provider shall indemnify Scotland Excel with respect to all costs, charges and expenses arising out of or in connection with any such investigation or which Scotland Excel may have been ordered or required to pay to a third party.
- 43.9. In recognition of Scotland Excel's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies under the Act, the Service Provider may be subject to the requirement from time to time to complete a questionnaire and/or provide information to Scotland Excel on the extent and quality of the Service Provider's equalities and diversity policies. Good practice in this regard will be recognised by Scotland Excel, however, poor practice may result in Scotland Excel issuing a mind to comply letter describing the nature of improvement required and the associated timescales. If the Service Provider fails to improve practice in this regard Scotland Excel may take further action, up to and including the termination of the Contract.
- 43.10. The Service Provider will extend the obligations under this Condition 43 to any arrangements with Sub-Contractors.

44. Human Rights Act 1998

- 44.1. The Service Provider shall at all times comply with the obligations which are incumbent upon Scotland Excel as a “public authority” in terms of the Human Rights Act 1998 (“the 1998 Act”) and of all secondary legislation made under the 1998 Act.
- 44.2. The Service Provider shall take all reasonable steps to ensure the observance of this Condition by all servants, employees or agents of the Service Provider and all Sub-Contractors engaged by the Service Provider.
- 44.3. The Service Provider shall indemnify Scotland Excel against all losses, costs, expenses and damages and shall keep Scotland Excel indemnified against all liabilities, demands, claims, actions or proceedings incurred as a result of an alleged breach of this Condition by the Service Provider.
- 44.4. Scotland Excel may monitor the Service Provider’s compliance with the 1998 Act at periodic intervals during the performance of the Contract.
- 44.5. Scotland Excel may wish to be provided with demonstrable evidence as to how the Service Provider intends to secure compliance with the provisions of the 1998 Act.

45. Data Protection and Information Security

- 45.1. The Service Provider undertakes to comply with the provisions of the the Law relating to data protection and in particular, warrants that appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. Each party undertakes to comply with the Law relating to data protection including, for the avoidance of doubt, the provisions of the Data Protection Act 1998 and, as of 25 May 2018, Regulation (EU) 2016/679 on the protection of the natural persons with regard to the processing of personal data and on the free movement of such data (the “**EU General Data Protection Regulation**” or “**GDPR**”) and any enactments thereunder or amendments thereto.
- 45.2. The Service Provider undertakes to ensure that its staff are aware of their obligations under the Law relating to data protection.
- 45.3. The Service Provider may be acting as a Data Controller in its own right, but where the Service Provider is acting as a Data Processor on behalf of Scotland Excel, the Service Provider undertakes to comply with the provisions of the Law relating to data protection as though it were a Data Controller of Scotland Excel data, and will be expected by Scotland Excel to enter into a separate Data Processing Agreement where appropriate.
- 45.4. In any event, the Service Provider agrees to indemnify and keep Scotland Excel indemnified from and against all costs, claims, demands, damages, expenses, losses and liabilities which may be incurred directly or indirectly in connection with

a breach of the provisions of this Condition 45 including, but not limited to, the imposition of any monetary penalty by the Information Commissioner.

- 45.5. The Service Provider undertakes to have formal policies and procedures in place addressing information security awareness, training of staff, security management of systems, both manual and electronic where Scotland Excel data may be held, as well as the physical security of buildings where information is held.
- 45.6. Access to Scotland Excel data, provided under the Contract, must be restricted by the Service Provider and only provided where their staff have a direct requirement to process it in connection with the purpose of the Contract.
- 45.7. Scotland Excel reserves the right to visit Service Provider sites which are involved in receiving, storing or processing Scotland Excel data to ensure that security controls continue to meet Scotland Excel standards.
- 45.8. The Service Provider must notify Scotland Excel immediately of any risks or compromise to Scotland Excel data or any incidents or concerns which may impact on the confidentiality, integrity or availability of Scotland Excel data. Where risks are identified which are considered to have been ignored or an inappropriate response provided, Scotland Excel reserves the right to suspend the provision of information to the Service Provider until appropriate remedial action has been taken.

46. Confidentiality

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

47. Public access to information

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

48. Indemnity regarding Data Protection and Information Security and Confidentiality

The Service Provider shall indemnify and keep Scotland Excel and the Council indemnified from and against all costs, claims, damages, expenses, losses and liabilities which may be incurred directly or indirectly in connection with a breach of Conditions 45 (Data Protection and Information Security) or 46 (Confidentiality) or both.

49. Disclosure of information

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

50. Company Profile

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

51. Intellectual Property Rights

- 51.1. All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material:
 - 51.1.1. furnished to or made available to the Service Provider by or as directed by Scotland Excel shall remain the property of Scotland Excel;
 - 51.1.2. prepared by or for the Service Provider as directed by Scotland Excel for use, or intended use, in relation to the performance by the Service Provider of its obligations under the Contract shall belong to Scotland Excel, and the Service Provider shall not, and shall ensure that its staff shall not, (except when necessary for the performance of any contract following from this Contract) without prior approval, use or disclose any such Intellectual Property Rights.
- 51.2. The Service Provider shall obtain approval before using any material, in relation to the performance of its obligations under the Contract which is or may be subject to any third party Intellectual Property Rights and shall indemnify Scotland Excel and the Council from and against all actions, suits, claims, demands, losses, changes, damages, costs and expenses and other liabilities arising from an infringement of any third party Intellectual Property Rights.
- 51.3. The Service Provider shall not infringe any third party Intellectual Property Rights in supplying the Services and the Service Provider shall indemnify and keep indemnified and hold Scotland Excel and the Council harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which Scotland Excel and/or the Council may suffer

or incur as a result of or in connection with any breach of this Condition, except where any such claim arises from:

51.3.1. items or materials based upon designs supplied by Scotland Excel; and

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

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

52. Change of Legislation

52.1. The Service Provider shall bear the cost of ensuring that the Services shall comply with all applicable statutes, enactments, orders, regulations or other similar instruments and any amendments thereto, except where any such amendment could not reasonably have been foreseen by the Service Provider at the date when the Contract was concluded being the date on which Scotland Excel awarded the Contract to the Service Provider.

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

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

53. Prevention of Corruption

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

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

- 53.1.2. in relation to any contract with the first party, the other party has committed an offence under the Prevention of Corruption Acts 1889 to 1916; or
- 53.1.3. the other party shall have given any fee or reward, the receipt of which is an offence under subsection (2) of section 68 of the Local Government (Scotland) Act 1973.
- 53.2. Each party shall comply with all the requirements of the Bribery Act 2010 and any form of guidance issued in respect of the Bribery Act 2010.
- 53.3. Each party reserves the right to terminate the Contract without incurring any penalty whatsoever and to recover from the other party the amount of any loss resulting from such termination if the other party shall have acted in a manner contrary to the requirements of the Bribery Act 2010 in respect of any direct or indirect business carried out for the purposes of the Contract.
- 53.4. The terms of this Condition 53 shall apply in full in any circumstance where the action or act described has been done by any person employed by, acting on behalf of or representing a party to the Contract, whether or not with that party's knowledge.

54. Prevention of Fraud

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

55. Force majeure

- 55.1. Neither party shall be liable to the other party for any delay in performing, or failure to perform, its obligations under the Contract to the extent that such delay or failure is a result of force majeure

- 55.2. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such force majeure. However, if such force majeure prevents either party from performing its material obligations under the Contract for a period in excess of three (3) Months, either party may terminate the Contract with immediate effect by notice.
- 55.3. Any failure or delay by the Service Provider in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to force majeure only if that agent, Sub-Contractor or supplier is itself impeded by force majeure from complying with an obligation to the Service Provider.
- 55.4. If either party becomes aware of force majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described herein it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

56. Waiver

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

57. Severability of Conditions

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

58. TUPE

- 58.1. Without prejudice to the Service Provider's obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"), at any time and within twenty (20) Working Days of being requested to do so by Scotland Excel, acting on behalf of the Councils using the Contract, the Service Provider shall fully and accurately disclose to Scotland Excel all "employee liability information" as defined by TUPE.
- 58.2. Scotland Excel acting on behalf of the Councils using the Contract shall be entitled to use this information for the purposes of TUPE and for the purposes of re-tendering. Scotland Excel may include this information in any documentation for the re-tender and may share this information with any prospective Service Provider of the Services.
- 58.3. The Service Provider shall indemnify Scotland Excel against any claim or any liability arising from any deficiency or inaccuracy in the information that the Service Provider is required to provide in terms of this Condition.

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

59. Serving of Notices

- 59.1. Any notice or other communication to be given from one party to the other under the Contract shall be valid only if it is made in writing.
- 59.2. Further any such notice or other communication which is to be given by either party to the other, except for the purpose of court proceedings, shall be given by physical letter sent by hand or by a signed for special delivery postal service (for example, Royal Mail Signed For or Royal Mail Special Delivery Guaranteed). Such letters shall be addressed to the Service Provider or to Scotland Excel in the following manner -
- 59.2.1. For the Service Provider – to the address stated in the Tender Declaration.
- 59.2.2. For Scotland Excel – The Director, Scotland Excel, Renfrewshire House, Cotton Street, Paisley, PA1 1AR
- 59.3. Where a notice or communication is delivered by hand, it shall be deemed to have been delivered when it is left and signed for at the relevant recipient's address set out in Condition 59.2.
- 59.4. Where a notice or communication is delivered by a signed for special delivery postal service, provided that it is not returned as undelivered, it shall be deemed to have been given at the earlier of: two (2) Working Days after the day on which the letter was posted, or acknowledgement of receipt of such a letter by the Service Provider or Scotland Excel.
- 59.5. The Service Provider shall advise Scotland Excel, as soon as practicable and in any event no later than seven days after any change, of a change of address for service by sending a notice in accordance with this Condition.
- 59.6. Scotland Excel may change its address for service by sending a notice in accordance with this Condition.
- 59.7. Scotland Excel shall not be responsible for any failure to intimate or delay in intimation arising out of or in consequence of the Service Provider's omitting to advise Scotland Excel of a change under this Condition.

60. The Contract (Third Party Rights) (Scotland) Act 2017

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

61. Law of Scotland

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

SCHEDULE: Definitions and Interpretation

Definitions

“Acquired Rights Directive” means the European Union Council Directive 2001/23/EC.

“Authorised Officer” means the relevant Council officer appointed to oversee the operation of this Contract with a Service Provider and able to issue instructions and agree operational issues with the Service Provider.

“Background Intellectual Property Rights” means all intellectual property in the Materials other than Foreground Intellectual Property Rights.

“Call-off” means any contract between the Council and the Service Provider pursuant to a Purchase Order consisting of the Standard Terms of Appointment and the Purchase Order.

“Charge” means the charges determined in accordance with the Contract payable by the Council to the Service Provider under any Call-off for the full and proper performance by the Contractor of its obligations under the Call-off and including, for the avoidance of doubt, all delivery charges where the Goods are to be delivered as part of the Service.

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

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

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

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

“Control” means the ability to direct the affairs of another, whether by virtue of the ownership of shares, contract or otherwise.

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

“Default” means any breach of the obligations of Scotland Excel, a Council or the Service Provider (including but not limited to fundamental breach or breach of a fundamental term) or

any other default, act, omission, negligence or statement of Scotland Excel, a Council or the Service Provider in connection with or in relation to the subject matter of the Contract or a Call-off, as appropriate, and in respect of which either party to the Contract or Call-off, as appropriate, is liable to the other.

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

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

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

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

“EU Financial Assistance” means funding received from the European Union whether directly or indirectly through another person.

“Foreground Intellectual Property” means any Intellectual Property Right which (a) is contained in the Materials; (b) came into existence after the date on which the Service Provider began the supply of the Service under the Call-off; and (c) has been created for the purposes of the Call-off solely and exclusively for the Council in connection with the Service.

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and industry codes of practice and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“Goods” means all products, goods and materials that the Service Provider is required to supply or does supply in providing Services.

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

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

“Intellectual Property Rights” means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other

similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

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

“Law” means:

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

“Materials” means all information, formulae, data, models, drawings, prints, samples, specifications, documentation, software or other similar items and other technology including improvements in the same used in, or otherwise provided by the Service Provider to the Council as part of, the Service under the Call-off.

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

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

“Month” means a calendar month.

“Person” includes a firm or company.

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

“Price” means the price determined in accordance with the Contract payable by the Council to the Service Provider under any Call-off for the full and proper performance by the Service Provider of its obligations under the Call-off and including, for the avoidance of doubt, all delivery charges.

“Prohibited Activities” means any activities which, in the reasonable opinion of the Council bring, or are likely to bring, the Council into disrepute.

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

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

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

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

“Service Provider” means the person who by the Contract undertakes to supply or render Services or supply the Goods or works (and, dependent on specific Contract arrangements between the parties, other Services as agreed) for Scotland Excel and/or the Councils as is provided by the Contract. Where the Service Provider is an individual or a partnership, the expression shall include the personal representatives of that individual or of the partners or either of them, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Service Provider in accordance with the Contract or to whom the benefit of any Call-off may be assigned by the Service Provider in accordance with the Standard Terms of Appointment, and where the context permits, includes a person whom Scotland Excel or a Council, as appropriate, has agreed to allow to participate in the Contract or Call-off, as appropriate, but who is not at the relevant time a party to a Contract or Call-off, as appropriate.

“Standards” mean the standards applying to the Services by Law when supplied in Scotland or the equivalent national standards applying in the Service Provider’s place of establishment provided always that the said equivalent national standards comply fully with the relevant EU legal requirements.

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

“Sub-Contractor” means any body or person employed by the Service Provider to carry out the whole, or any part, of the Services.

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

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

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

“TFEU” shall mean the Treaty on the Functioning of the European Union.

“Treaties” means (1) those treaties of the European Communities (now the European Union) and its predecessor bodies to which the United Kingdom agreed on its accession to the European Communities on 1 January 1973 and (2) those treaties to which the United Kingdom as a member of the European Union assented (on those particular terms as applied to it) between the date of its accession and the date of its departure from the European Union and “Treaty” shall be interpreted accordingly.

“Variation” means a variation in the provisions of the Contract made in terms of Condition 24.

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

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

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

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

- signature being signed using Electronic means and which is in accordance with the Electronic Communications Act 2000, the Electronic Signatures Regulations 2002 (SI 2002 No. 138), the Electronic Documents (Scotland) Regulations 2014 and the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 as appropriate; or
- a wet ink signature by an individual duly authorised to sign any document relating to the Contract.

Interpretation

The masculine includes the feminine, and vice versa.

The singular includes the plural, and vice versa.

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

Anything including any decision or action that Scotland Excel is required or authorised to take or do under the Contract may be taken or done by any person so authorised either generally or specially by Scotland Excel.

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

Unless otherwise specifically stated in the Contract, the Standard Terms of Appointment, the Tender Documents or the Tender Specification, any requirement or specification in any of these documents shall be deemed to be accompanied by the words “or equivalent” in accordance with Regulation 43 of the Public Contracts (Scotland) Regulations 2015.

APPENDIX: Standard Terms of Appointment