



**Scotland Excel**

**Appendix 1 (Standard Terms of  
Appointment) to the General Conditions of  
Contract for Services**

**[Month][Year]**

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## **1. Definitions and Interpretation**

The definitions and rules of interpretation contained in the Schedule: Definitions and Interpretations of the Contract apply to these Standard Terms of Appointment, except where the context otherwise requires.

## **2. Variation of Conditions**

Unless otherwise provided, these Standard Terms of Appointment may not be varied by either party or by both parties save for any necessary information required to complete any Call-off or Purchase Order.

## **3. Capacity and Eligibility to Contract**

- 3.1. The Service Provider confirms that to the best of its knowledge that there are no restrictions of any kind which in any way affect its capacity to contract. If any such restrictions exist or arise, the Council will have the option to terminate any Call-off or other agreement or contract which purports to have been entered into with the Service Provider and the Service Provider shall indemnify the Council in full for any resulting loss.
- 3.2. Without prejudice to the immediately preceding paragraph, the Service Provider confirms that, to the best of his knowledge,
  - 3.2.1. it has not been convicted of any of the offences detailed in Regulation 58(1),
  - 3.2.2. none of the grounds detailed in Regulation 58(3) or 58(8) of the Public Contracts (Scotland) Regulations 2015 apply to it; and
  - 3.2.3. it has not committed any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or Section 137 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 the Council if, at any time, subsequently during the term of the Call-off, conviction of any said offence or the occurrence of any such ground or the committing of any such breach happens.
- 3.3. In the event of any breach of this Condition by virtue of such conviction, such occurrence or such committing, the Council shall have the option to terminate the Call-off and the Service Provider shall indemnify the Council in full for any resulting loss.

#### **4.Mistakes in Information by Service Provider**

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

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

- 5.1. In consideration of the Service Provider's performance of its obligations under each Call-off, the Council shall pay the Price.
- 5.2. The Council shall, in addition to the Price and following evidence of a valid VAT invoice, pay the Service Provider a sum equal to the VAT chargeable on the value of the Service supplied in accordance with each Call-off.
- 5.3. The Council shall pay all sums due to the Service Provider within thirty (30) days of receipt of a valid invoice in respect of each Purchase Order, submitted monthly in arrears. For the avoidance of doubt the Service Provider shall accept payment by any procurement card specified by the Council.
- 5.4. The Service Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Council to substantiate the invoice.
- 5.5. Where the Service Provider enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under a Call-off, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Service Provider to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
- 5.6. The Service Provider shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time or times in respect of the Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under any Call-off. Any amounts due under this Condition shall be paid by the Service Provider to the Council not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Council. The Service Provider shall not suspend the provision of the Service unless the Service Provider is entitled to terminate the Call-off under these Standard Terms of Appointment for failure to pay undisputed sums of money.

#### **6.Recovery of Sums Due**

- 6.1. If under any Call-off 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

Call-off or any other agreement or contract with the Council. or otherwise due to the Service Provider by the Council arising from the discharge of any of its statutory functions.

## **7.Unauthorised Provision of Service**

- 7.1. The Service Provider shall not provide any Service without first receiving a Purchase Order for such Service. Neither Scotland Excel nor a Council shall be liable for the cost of any Service provided if the Service is not covered by the prior issue of a Purchase Order.

## **8.Method of Carrying Out the Service**

- 8.1. The Service Provider shall not commence any work on the Council premises without obtaining the Council's prior consent.
- 8.2. Access to the Council premises shall not be exclusive to the Service Provider but only such as shall enable him to carry out the Service concurrently with the execution of work by others. The Service Provider shall co-operate with such others as the Council may reasonably require.
- 8.3. Every employee of the Service Provider and any Sub-Contractor must clearly display an identity showing the name and address of the Service Provider and bearing the name and photograph of the employee. Identity cards must be shown before access to Premises will be permitted.
- 8.4. Where the provision of the Service is to be made to schools, the Service Provider's employees must report first to the school office and vehicles may be driven through school playgrounds only on the approval and direction of an authorised person.
- 8.5. The Council shall have the power at any time during the progress of the Service to order in writing:
- 8.5.1. The removal from the Council premises of any materials which in the reasonable opinion of the Council are either hazardous, noxious or not in accordance with the Call-off; and/or
  - 8.5.2. the substitution of proper and suitable materials; and/or
  - 8.5.3. the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work which, in respect of material or workmanship is not, in the reasonable opinion of the Council, in accordance with the Call off.
- 8.6. If any of the Service is not delivered within the time or times specified in the Contract or, where not so specified, in the Purchase Order, the Council may, without prejudice to any other remedies, give notice to the Contractor and terminate the Call-off either in respect

of this Service or in respect of all Services to which the Call-off relates other than those delivered in accordance with the Call-off before the date of termination.

- 8.7. On completion of the Service, the Service Provider shall remove its plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Service and leave the Premises in a neat and tidy condition.

## **9.Period of Call-off**

- 9.1. The Service Provider shall begin performing the Service on the date stated in the Purchase Order and shall complete them by the date stated in the Purchase Order or continue to perform it for the period stated in the Purchase Order (whichever is applicable). Time is of the essence of the Call Off.

## **10.Service Provider's Staff**

- 10.1. The Council may, by notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Premises for:
  - 10.1.1. any member of the Service Provider's staff; or
  - 10.1.2. person employed or engaged by any member of the Service Provider's staff, whose admission or continued presence would, in the reasonable opinion of the Council, be undesirable.
- 10.2. The Service Provider shall be obliged to comply and ensure that its staff comply immediately with any requirement of the Council under Condition 10.1.
- 10.3. At the Council's written request, the Service Provider shall provide a list of the names and work addresses of all persons who may require admission to the Premises in connection with a Call-off, specifying the capacities in which they are concerned with the Call-off and giving such other particulars as the Council may reasonably request.
- 10.4. If the Service Provider fails to comply with a request under Condition 10.3 as soon as possible and, in any event, within one Week of the date of the receipt of the request and in the reasonable opinion of the Council such failure may be prejudicial to the interests of the Council then the Council may terminate each Call-off, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.
- 10.5. The Service Provider's staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.



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

#### **Service Provider's Key Personnel**

- 10.7. Where required by the Council, the Service Provider shall make available for the purposes of the Service any individuals named on its tender or similar formal submission as key personnel (“**Key Person**” in the singular and “**Key Personnel**” in the plural or general). The Service Provider shall provide the Council with a list of the names and addresses of all others regarded by the Service Provider as Key Personnel and, if and when instructed by the Council, all other persons who may at any time be concerned with the Service or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require. The Council may at any time by notice to the Service Provider designate any person concerned with the Service or any part of it as a Key Person. The Service Provider shall not without the prior written approval of the Council make any changes in the Key Personnel referred to in this paragraph. Where a change of Key Personnel occurs, the Council shall be entitled to consider whether the Service Provider remains suitable to perform the obligations under the Call-off and, if not in its opinion so suitable, the Council shall be entitled to exercise its rights of termination herein. The Key Personnel appointed for the Service project shall be appropriately qualified and experienced staff.
- 10.8. The decision of the Council shall be final and conclusive as to the designation or approval of Key Personnel or as to whether the Service Provider has taken the steps required of it by this Condition.
- 10.9. The Service Provider shall bear the cost of any notice, instruction or decision of the Council under this Condition.

### **11. Protection of Vulnerable Groups (Scotland) Act 2007**

- 11.1. Where a Call-off requires the Service Provider, its 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 it complies with all of the relevant requirements, including the establishment of and adherence to effective procedures, of the PVG Act.
- 11.2. For the provision of the Service which falls 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.
- 11.2.1. The appropriate level of Disclosure shall be determined by reference to Part V of the Police Act 1997 (as amended) and, for the avoidance of doubt, by

reference to any regulations made under that Act and Guidance issued by Disclosure Scotland;

11.2.2. 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 Section 97 and 94 respectively of the PVG Act. Where the Disclosure shows that the subject of the Disclosure has convictions, reprimands, warnings, cautions or any other relevant information, the 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 provision of the Service 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.

11.2.3. The Service Provider shall recheck the status of its existing employees, agents and anyone else involved in the provision of the Service not less than every three (3) years in order to ensure that their Disclosure is up-to-date;

11.2.4. 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.

11.3. If the Council takes the view that the Service Provider's staff providing the Service, in part or in entirety, require clearance under the PVG Act, the Service Provider shall be obliged to submit the necessary applications to Disclosure Scotland, whose views on whether the applications fall within the terms of the Law and, therefore, are to be processed, shall be final and binding on both the Council and the Service Provider.

## **12. Invoice and Payment**

12.1. The Council will include the address to which invoices will be sent and any additional information required for invoicing purposes in (to be completed).

12.2. Invoices will be submitted in arrears.

12.3. Payment by the Council will not imply acceptance by the Council that the Service has been performed satisfactorily.

12.4. The Council will make payments of any valid invoices no later than thirty (30) days after receipt.

- 12.5. The sum or sums charged for the Service are to be invoiced exclusive of Value Added Tax (VAT) and the amount of any VAT will be shown separately on each invoice. The Council will pay VAT on that part of the sums due to the Service Provider for which the Council has a liability.

### **13. Guarantee of Goods**

- 13.1. Except where otherwise specified within the terms of the Contract, the Service Provider hereby guarantees any Goods supplied as part of the Service for a period no less than that running from the date of delivery to the Premises to the date 12 Months thereafter against faulty materials or workmanship. If the Council shall within such guarantee period or within 25 working days thereafter give notice to the Service Provider of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Service Provider shall (without prejudice to any other rights and remedies which the Council may have) promptly, and in any event within 5 working days, replace the defective Goods free of charge.
- 13.2. Any Goods which are rejected by the Council under this Condition shall be returned to the Service Provider at the Service Provider's risk and expense. The Council shall make reasonable efforts to facilitate the collection of the Goods by the Service Provider.

### **14. Warranties and Representations**

- 14.1. The Service Provider warrants and represents that:
- 14.1.1. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under any Call-off;
  - 14.1.2. in entering any Call-off it has not committed any fraud or offence under the Bribery Act 2010;
  - 14.1.3. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under any Call-off;
  - 14.1.4. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under any Call-off;
  - 14.1.5. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver,

- administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;
- 14.1.6. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under any Call-off;
  - 14.1.7. in the 3 years prior to the date of any Call-off it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - 14.1.8. in the 3 years prior to the date of any Call-off it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
  - 14.1.9. it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under any Call-off; and
  - 14.1.10. each Call-off is established on these Standard Terms of Appointment without amendment thereto (except as amended by the Special Conditions of Contract, where appropriate) save for the necessary information to complete the Call-off and the Purchase Order.

## **15.Contract Performance**

- 15.1. The Service Provider shall perform its obligations under each Call-off:
  - 15.1.1. in accordance with the terms of the Contract and each Call-off;
  - 15.1.2. with appropriately experienced, qualified and trained personnel;
  - 15.1.3. in complete and continuous compliance with the obligations relating to Insurance;
  - 15.1.4. in accordance with Good Industry Practice;
  - 15.1.5. in compliance with the Law, Good Industry Practice and the Standards relevant to the Service;
  - 15.1.6. in compliance with all requirements of the Council with regard to the control of expenditure, including its financial regulations or code of guidance as intimated to the Service Provider before it begins to provide the Service or during the period of the Service or both; and

- 15.1.7. in compliance with such Service levels, including attendance at meetings involving the Council relating to the Call-off, as may be stipulated in the Call-off and the timescales stipulated by the Council for the provision of the Service.
- 15.2. Further, where any Goods are supplied as part of the Service, the Service Provider shall ensure that:
  - 15.2.1. the Goods conform in all respects with the Contract and the Purchase Order and, where applicable, with any sample approved by the Council;
  - 15.2.2. the Goods meet the requirements of the Contract and any particulars specified in the Contract and the Purchase Order;
  - 15.2.3. the Goods conform in all respects with the Law, Good Industry Practice and the Standards relevant to them;
  - 15.2.4. the Goods are free from defects in design, materials and workmanship and fit and sufficient for all the purposes for which such Goods are ordinarily used and all the purposes for which they purport to be used; and
  - 15.2.5. the Services for which the Goods are provided are performed and perform in accordance with and correspond with the requirements of the Contract and any particulars specified in the Contract and the Purchase Order.

## **16. Monitoring**

- 16.1. The Service Provider shall comply with the monitoring arrangements set out in the Contract and additional requirements of the Purchase Order. Furthermore, the Service Provider shall provide Scotland Excel and the Council with all such information as may reasonably be requested and in particular regarding any Call-off, the Service Provider's compliance with the Service levels stipulated in the Contract and the Purchase Order in respect of the Service Provider's performance of its obligations and/or any dispute between the parties.
- 16.2. The Service Provider will demonstrate, through an agreed quality assurance system, how it will achieve the requirements of the Call-off. The Council will use this information for the purpose of monitoring the Service.
- 16.3. The Service Provider shall evidence within its quality assurance method that they meet the requirements of the Call-off.
- 16.4. To facilitate the Council's effective monitoring of the Call-off and any subsequent review of the Service during the period of the Call-off and any other relevant legislative requirements the Service Provider shall provide the Council with such information

relating to the provision of the Service as the Council may reasonably request from time to time.

- 16.5. Throughout the duration of the Call-off both the Council and the Service Provider shall constantly consider and review whether any financial savings can be achieved in the operation of the Service either through efficiency or management or other costs whatsoever and the Service Provider may accept any reasonable suggestions from the Council as to the means of achieving such savings. To facilitate this process the Service Provider shall make available to the Council such relevant documentation and information relating to the provision of the Services, as the Council acting reasonably may specify to enable the Council to understand the basis upon which the delivery of the Service has been costed by the Service Provider.
- 16.6. The Council may in its discretion review the operation of the Call-off and the performance by the Service Provider of its obligations hereunder prior to the expiry of the Contract.
- 16.7. The Service Provider shall provide the Council with written reports pertaining to the Service whenever this is considered necessary by the Council, wherein the Service Provider shall report on such matters as the Council shall specify.
- 16.8. For the purposes of monitoring and review of the Service, the Service Provider shall ensure that the Council shall obtain access to any such records pertaining to the Service as the Council require upon reasonable notification of such a requirement being given to the Service Provider. The Service Provider shall permit the Council to make copies for its own use of the information made available in terms of this paragraph.
- 16.9. The Council may in its discretion involve the Service Provider in monitoring and review procedures and shall in any event advise the Service Provider of the principal conclusions and recommendations arising out of such monitoring and review. If appropriate the Council shall consult the Service Provider concerning the implementation of any recommendations or other proposals arising out of such monitoring and review.
- 16.10. For the purpose of monitoring and review the Council may in its discretion consult with and involve any other interested persons with whom the Council may share any information obtained by the Council in the course of such monitoring and review.

## **17.Failure to Conform**

If the Service Provider fails to conform to any terms and conditions of the Call-off, the Council may terminate the Call-off in accordance with its powers to terminate the Call-off under Condition 22 (Determination of Call-off).

## **18.Failure to Meet Specification**

- 18.1. All Services and Goods provided to the Council must conform to the agreed specification under the Contract or may be rejected by the Council.
- 18.2. Unless the specification states otherwise, the Services and Goods shall be strictly in accordance with the Law, Good Industry Practice and the Standards including without limitation the latest relevant British Standards Institution or EU specification where such exists and to the satisfaction of the Council.
- 18.3. Where Services are rejected under this Condition by the Council, the provision of such Services by the Service Provider must cease immediately. Goods rejected under this Condition shall be removed by the Service Provider at its own expense within seven days (7 days) of the date of receipt of notification of rejection. If the Service Provider fails to remove the Goods within this period, the Council shall be entitled to return the rejected Goods or any of them at the Service Provider's risk, and recover all costs incurred from the Service Provider.
- 18.4. Services or Goods rejected under this Condition will not have been provided or delivered (as appropriate) under the Call-off and the Service Provider shall, within the time for provision or delivery (as appropriate) stipulated in the Contract or Purchase Order or such other time as the Council may allow, provide or deliver (as appropriate), at the Service Provider's expense, satisfactory Services and Goods in place of those rejected.
- 18.5. Nothing in these Conditions, or any amendment agreed thereto, will exclude the terms of the Law governing the provision of the Goods or Services. If the Services or the Goods or any part thereof are unsatisfactory in the opinion of the Council then the Council may, at its own discretion, determine the Call-off as a whole or only in respect of the Services or Goods which are unsatisfactory.

## **19. Service Provider's Liabilities**

- 19.1. Without prejudice to the terms of Condition 39 (Liability, Indemnity and Insurance) of the General Conditions of Contract for Services, for the avoidance of doubt, the Service Provider agrees to indemnify the Council against death of or bodily injury to any person and loss of or damage to any property belonging to the Council or any third party arising through or in consequence of its operations in supplying and delivering or providing the Service and Goods to the Council and as a result of any act of negligence or omission on the part of the Service Provider, employees or contractors employed by it.
- 19.2. For the avoidance of doubt, the Service Provider's liability is to indemnify the Council from any claims from employees of the Service Provider and any third party as a result of bodily injury, loss of or damage to any property of any nature whatsoever, and includes an indemnity to the Council in respect of all claims and in respect of costs and expenses reasonably incurred by the Council in the reinstatement of any property lost or damaged.

## 20. Variations

### Variation of Call-offs

- 20.1. Unless otherwise provided, these Standard Terms of Appointment and the relevant Call-off may only be varied with the prior written agreement of the Council and the Service Provider.
- 20.2. No terms or conditions put forward at any time by the Service Provider shall form any part of these Standard Terms of Appointment and the relevant Call-off unless specifically agreed in writing by the Council.
- 20.3. No change shall be made to these Standard Terms of Appointment and the relevant Call-off if the change does not comply with the requirements of the Regulations, in particular, Regulation 72.

### Variation of Call-off Requirements

- 20.4. Each party (the “**proposing party**”) shall be entitled to propose any variation to the Service for consideration in relation to the Call-off requirements. Any such variations could include, but shall not be restricted to, additions, alterations, substitutions or omissions to the Service and changes in quality, form, character, kind, timing or method of sequence of the Service
- 20.5. The proposing party shall notify the other party in writing of its proposal. If the proposing party is the Council, the Service Provider shall confirm in writing within two (2) Weeks of receipt of the proposal the effect the variation shall have on the Service including any effect on the Price or Prices payable for the Service.
- 20.6. To consider any proposed variation, both parties shall have available to them:
  - 20.6.1. the reason for the proposed change;
  - 20.6.2. full details of the proposed change;
  - 20.6.3. the effects on the Price, if any, of the proposed change; and
  - 20.6.4. details of the likely impact, if any, of the proposed change on other aspects of the Service.
- 20.7. 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.
- 20.8. Any change proposed by either party shall constitute an amendment to the Call-off 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 the Call-off shall be undertaken entirely at the expense and liability of the Service Provider.

- 20.9. No variation in the Service shall be made as a modification of the Call-off which does not comply with the requirements of the Regulations, in particular, Regulation 72.

## **21.Suspension**

- 21.1. The Council may suspend the Service Provider's participation in the Call-off where:
- 21.1.1. in the reasonable opinion of the Council, 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 and relevant Purchase Order;
  - 21.1.2. in the reasonable opinion of the Council, the Service Provider has failed to timeously implement any remedial action plan agreed with the Council;
  - 21.1.3. the Service Provider has provided a notice of assignation, sub-contracting, change of Control, or closure or substantial reconfiguration of the Service and the Council has serious concerns about the viability of the arrangement, or where the Service Provider has failed to provide notice of the same;
  - 21.1.4. the Service Provider or the Council has given notice of termination; or
  - 21.1.5. in the reasonable opinion of the Council, the Service Provider is in material breach of the Contract or Call-off.
- 21.2. Once a decision has been taken to exercise suspension, the Council will:
- 21.2.1. notify the Service Provider in writing of the reason for the suspension and the date the suspension takes effect; and
  - 21.2.2. notify Scotland Excel of the suspension.
- 21.3. During any period of suspension:
- 21.3.1. the Service Provider must continue to co-operate with and comply promptly with any reasonable requirements of the Council;
  - 21.3.2. any other current Purchase Orders with the Service Provider 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;

- 21.3.3. the Council shall ensure that no further Purchase Orders are referred to the Service Provider; and,
- 21.3.4. following receipt of notification in accordance with this Condition the Service Provider will notify Scotland Excel of the Council's suspension of the Call-off, of the other current Purchase Orders made by the Councils with the Service Provider and any such further information as may be reasonably required by Scotland Excel.
- 21.4. The relevant Councils and Scotland Excel will work together with the Service Provider to ensure there is no interruption to current Purchase Orders with the Service Provider, and to address the issues that led to the suspension, and the Service Provider shall co-operate fully with the Councils and Scotland Excel.
- 21.5. During the period of suspension, the Council 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.
- 21.6. Withdrawal of the notice issued in accordance with this Condition will be confirmed by the Council if and at such time as it becomes reasonably satisfied that the Service Provider is able to and will perform its obligations under the Call-off to the required standard.
- 21.7. Notwithstanding the use of the Council's powers of suspension under this Condition the Council shall be entitled to take into account the occurrence and the resolution of the circumstances falling within this Condition in its assessment of the Service Provider's overall performance and to exercise its powers to terminate the Call-off under Condition 22 (Determination of Call-off).

## **22.Determination of Call-off**

### **Determination by the Council**

- 22.1. If the Council at any time wishes to determine a Call-off, notice in writing shall be given to the Service Provider and twenty eight days (28 days) after delivery of such notice, the Call-off shall in all respects cease and determine.
- 22.2. The Council may also terminate the Call-off in the event of a failure by the Service Provider to comply in the performance of the Call-off with the Law, including in particular, legal obligations under environmental, social and employment law.

### **Determination under Regulation 73**

- 22.3. In addition to any of its other rights to terminate the Call-off, the Council shall have the right to terminate the Call-off where:-

- 22.3.1. the Call-off 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);
  - 22.3.2. the Service Provider has, at the time of being awarded the Contract, 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 Contract procurement procedure; or
  - 22.3.3. the Call-off 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.
- 22.4. The Council shall give notice of termination to the Service Provider in writing and termination shall take effect as follows:
- 22.4.1. where in the opinion of the Council, the issue giving rise to the exercise of the right to terminate under this Condition is sufficiently serious, with immediate effect; and
  - 22.4.2. in any other case, on the date specified in the notice which shall be no less than twenty-eight (28) days from the date on which the notice was given.
- 22.5. The Service Provider shall include in any sub-contract arising out of or in connection with the Call-off a right for it to terminate any such sub-contract where the Call-off is terminated by the Council under Regulation 73.
- 22.6. Where the Council has terminated the Call-off under clause 22.3, the Service Provider shall have no right of compensation except where it is established that the Council has acted or omitted to act negligently and this shall be the Service Provider's only remedy.

**General provisions applying to termination of the Call-off**

- 22.7. Subject to any other Conditions of these Standard Terms of Appointment, termination of the Call-off shall not prejudice the rights of either party that have arisen on or before the date of termination.
- 22.8. The Service Provider agrees that upon termination by the Council acting reasonably or expiry of the Call-off it shall not be entitled to make a claim against the Council in relation to costs howsoever incurred by the Service Provider in securing the award of the Call-off or providing the Service under the Call-off nor in relation to the loss of expected profits from the provision of Service under the Call-off.

- 22.9. Where the Council has determined a Call-off under the Standard Terms of Appointment, without prejudice to any other rights available to it, the Council may require the Service in respect of which the Call-off was so determined to be provided again by another service provider. There shall be recoverable from the Service Provider the amount by which the cost of re-provision of the Service exceeds the amount which would have been payable to the Service Provider in respect of the Service if it had been delivered in accordance with the Call-off.
- 22.10. Where the Service Provider receives notice of termination of its participation in the Call-off, it must take the following action as soon as possible and no later than the expiry date of said notice:
- 22.10.1. all information provided to the Service Provider by the Council must be returned in whatever format the parties to the Call-off shall agree, or destroyed by the Service Provider which shall certify its destruction to the Council at the request of the Council; and,
- 22.10.2. the Service Provider must provide to the Council an updated report relative to the monitoring information sought in accordance with Conditions 16 (Monitoring), 24 (Documentation) and 25 (Monitoring and Audit) in such format as the Council may determine.
- 22.11. The termination of the Call-off howsoever arising is without prejudice to the rights, duties and liabilities of any party accrued prior to termination (subject as otherwise expressly provided in the Call-off). Those rights shall include the right of the Council or the Service Provider or Scotland Excel as the case may be to claim damages against the other party arising out of that party's material breach of the Call-off. The clauses of the Call-off which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 22.12. Nothing in this clause shall limit the nature and extent of acts considered by a court of law or otherwise to be material breaches of the Call-off. No granting of time or period of notice under this clause 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 Call-off.

## **23. Intellectual Property Rights**

- 23.1. The Council hereby grants to the Service Provider for the term of the Call-off a non-exclusive, royalty free, non transferable licence (with rights to sub-license to the Service Provider's Sub Contractors) to use:
- 23.1.1. the Foreground Intellectual Property Rights for the sole purpose of providing the Services and/or the Materials to the Council; and

- 23.1.2. any pre-existing Intellectual Property Right of the Council which is made available to the Service Provider by the Council in order to assist the Service Provider in providing the Service and the Materials.
- 23.2. For the avoidance of doubt, the Council retains all rights in all Intellectual Property Rights owned by it prior to the Call-off and except as set out in this Condition 23, no licence is granted to the Service Provider to use any such Intellectual Property Rights.

#### **Foreground Intellectual Property Rights**

- 23.3. The Service Provider hereby assigns to the Council, with full title guarantee, (including by way of an assignment of future Intellectual Property Rights) all right, title and interest in, for all purposes, applications and fields of use, all Foreground Intellectual Property Rights in the Materials throughout the world, including, without limitation, the right to take action for any past, present and future damages and other remedy in respect of any infringement of that Foreground Intellectual Property Right. The Service Provider also hereby waives any moral rights in the Foreground Intellectual Property Rights.

#### **Background Intellectual Property Rights**

- 23.4. Prior to the commencement of the Service under the Call-off, the Service Provider shall inform the Council of all Background Intellectual Property Rights (whether developed by the Service Provider prior to the Call-off or owned by a third party or otherwise) desirable for use by the Service Provider in connection with the supply of the Materials to the Council.
- 23.5. In the event that the Service Provider is unable to identify Background Intellectual Property Rights which it needs to use in connection with the supply of the Service and/or the Materials then it shall identify it to the Council as soon as it ought reasonably to have become aware of it.
- 23.6. The Service Provider hereby grants to the Council and, where appropriate and applicable, shall procure the grant to the Council of:
- 23.6.1. a non-exclusive, royalty free, perpetual, irrevocable licence for the Council to use the Background Intellectual Property Rights in the Materials for the purpose of the use of or enjoyment of the Service and/or the Material;
- 23.6.2. a non-exclusive, perpetual and irrevocable licence for the Council to sub-license third parties to use the Background Intellectual Property Rights in connection with the use of the Foreground Intellectual Property Rights. In cases where the Service Provider is in breach of Condition 23.5 such sub-licence shall be royalty free. In all other cases, the commercial terms of such right to sub-license shall be no less favourable than that which may be

offered by the Service Provider to others on an arm's length basis at the time of granting each such sub-licence.

- 23.7. The Service Provider shall disclose to the Council (under appropriate obligations of confidence) all inventions which the Service Provider may make which are:
- 23.7.1. directly related to the Foreground Intellectual Property Rights in the Materials; or
  - 23.7.2. wholly or substantially based on the pre-existing Intellectual Property Rights of the Council.
- 23.8. If the Service Provider discloses a patentable invention to the Council in accordance with Condition 23.7, the Council may require the Service Provider to assist the Council with the preparation of the necessary documentation in order to assist the Council in filing a patent application.
- 23.9. Employee inventors of the Service Provider shall be named on any patent application filed by the Council under this Condition 23.9. Any compensation due to such inventor under Clause 40 of the Patents Act 1977 or otherwise shall be payable by the Council.

#### **Licences to Service Provider**

- 23.10. To the extent that the Service Provider wishes to obtain a licence of the Foreground Intellectual Property Rights owned by the Council and that beyond the term and outwith the purposes of the Call-off, then the Council will in good faith consider granting the Service Provider a non-exclusive licence of such Foreground Intellectual Property Rights on arm's length commercial terms.
- 23.11. The Service Provider shall, at the Council's cost and expense, execute all documents and perform such acts as may be reasonably necessary to enable the Council to obtain and/or maintain the rights granted to the Council under the Call-off.
- 23.12. The Service Provider waives, and shall require from any third party the waiver of, the exercise against the Council of all moral rights in Intellectual Property created or developed under the Call-off by or on behalf of the Service Provider.
- 23.13. Property in all tangible forms of the Materials directly related to the Foreground Intellectual Property Rights prepared or developed under or in connection with the Call-off shall vest in the Council as soon as they have been prepared or developed.

#### **Infringement Indemnity**

- 23.14. The Service Provider shall indemnify the Council in full and shall keep the Council fully indemnified on a continuing basis from and against any costs, claims, damages, losses, demands and expenses (including all legal expenses) which the Council suffers as a result

of any claim that the use by the Council of any Intellectual Property Rights in the Materials in accordance with the Call-off infringes the Intellectual Property Rights of any third party.

- 23.15. The Council shall promptly notify the Service Provider of any claim of the kind referred to in Condition 23.14 and shall not make any admission of liability or agree any settlement or compromise any such claim without the prior written consent of the Service Provider. The Service Provider shall, at its request and expense, be entitled to have conduct of and/or settle all negotiations, litigation or other dispute resolution procedure arising from any claim to which the indemnity applies and the Council shall give the Service Provider all reasonable assistance.

## **24. Documentation**

- 24.1. For the purposes of enabling the Council to verify compliance with the Call-off the Service Provider shall supply information and complete forms upon reasonable notice in accordance with the rules and recommended practices laid down by the Council in writing from time to time.
- 24.2. The Service Provider must use the template documentation supplied by the Council for all returns of information, delivery of programmes and communications with the public, and any other requirements by Scottish Government.
- 24.3. The Service Provider shall supply such information, and make its records available, to the Council in such manner and at such times as may be required in writing by the Council and without prejudice to the foregoing generality provide such information as shall be required by the Council to enable it to comply with its reporting requirements to third parties.
- 24.4. Where funding is used to match fund EU Financial Assistance the Service Provider shall retain all records and all other supporting documentation for at least three (3) years following the last payment or for a period not less than the specific requirements, statutory or otherwise, attaching to the provision of EU Financial Assistance where this is longer, on programme closure, for any operations. Further information can be found at: [www.scotland.gov.uk/topics/business-industry/support/17404/10514](http://www.scotland.gov.uk/topics/business-industry/support/17404/10514).
- 24.5. All other documentation for contracts where no EU Financial Assistance is involved shall be retained by the Service Provider for three (3) years following the last claim made.
- 24.6. The Service Provider will keep accounting records of all income and expenditure relating to the provision of the Service in a form that will enable all such income and expenditure to be identified separately from any other income and expenditure. These records must be retained for six (6) years after the date of the final payment by the Council under the Call-off, and must be made available at any time as required upon reasonable notice.
- 24.7. [Not used]

## 25. Monitoring and Audit

- 25.1. The Service Provider shall permit duly authorised representatives of the Council, including external auditors, unlimited access to interview (specify) and/or to examine all records and all other supporting documentation in support of delivery of the Service. The Service Provider shall furnish the Council as the case may be with suitable oral or written explanation if required and shall provide the Council as the case may be with access to its staff for interview on matters relating to the Service.
- 25.2. The Service Provider shall provide the Council with information, in such form as the Council may reasonably require, to enable the Council to monitor the Service Provider's activities, to audit its financial position and to evaluate the impact of its activities and provision of the Service against the Call- off requirements.
- 25.3. The Service Provider acknowledges that the finance that it will receive will be derived principally from public sector sources and shall ensure that its financial systems are sufficient to prevent misappropriation or fraud. The Service Provider shall notify the Council immediately that it becomes aware of any misappropriation or fraud and shall co-operate with the Council in having the misappropriation or fraud fully investigated.
- 25.4. The Council shall provide the Service Provider with an approval and evaluation monitoring system to evaluate the provision of the Service and the Service Provider shall operate effectively such evaluation and monitoring system.
- 25.5. Without prejudice to any other Condition, the Service Provider will maintain records and accounts and follow such recording and accounting procedures as will ensure that all actual costs incurred in the provision of the Service are traceable and properly attributed to the Service and generally shall vouch such costs to the reasonable satisfaction of the Council including but not limited to keeping expense vouchers and claims; invoices; purchase orders and Contracts; and full records of equipment and any other relevant purchases.
- 25.6. The Council reserves the right, at any time and as it may deem necessary, to:
  - 25.6.1. require the Service Provider to provide such financial, and/or other information to enable the Council to assess the Service Provider's continuing financial viability and its ability to continue to perform its obligations under the Contract;
  - 25.6.2. require any financial and/or other information provided by the Service Provider to be certified by an independent accountant.



## 26. Confidential Information

- 26.1. Both parties agree to treat as confidential the content of the Call-off and shall not disclose any information which is expressed to either party to be confidential or commercial-in-confidence by the person from whom it originates including all information which is so expressed and which may come into the possession, custody or control of the other party or of its employees, agents or Sub-Contractors as a result of or in connection with the performance of the Call-off regardless of whether such information is marked in writing as “proprietary” or “confidential” and including information which is not reduced to tangible form (“the Confidential Information”).
- 26.2. The provisions of this Condition shall not apply to any information which:
  - 26.2.1. is or becomes public knowledge other than by breach of this Condition by either party; or
  - 26.2.2. is authorised for release by the written consent of the originating party or by any other person from whom such information originates.
- 26.3. Both parties agree that it will not constitute a breach of this Condition where either of the parties is required to disclose certain information to a court of law or tribunal.
- 26.4. The Council reserves the right, at its sole discretion, to disclose to any third party, and through any medium, and at any time, details of the Service provided by the Service Provider and the payment for such Service and the Service Provider hereby consents to such disclosure and waives any right it may have to prevent or restrict disclosure on the ground of commercial confidentiality or otherwise.
- 26.5. The Service Provider shall ensure that each Sub-contractor, employee and Service user is made aware that the information referred to in Condition 26.4 may be made public in the interests of transparency.
- 26.6. Nothing in the Call-off shall prevent the Council from:
  - 26.6.1. disclosing Confidential Information pursuant to and in accordance with Condition 31 (Public Access to Information); or
  - 26.6.2. disclosing “employee liability information” (as defined by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”)) in relation to any re-tendering of the provision of all or part of the Service or similar Services and the Service Provider shall indemnify the Council for any and all loss or damage suffered or incurred by them as a result of any claim that such employee liability information could not be lawfully disclosed for such purpose.

## **27. Health and safety**

- 27.1. The Service Provider must operate health and safety policies and must perform every Call-off in accordance with the Law relating to health and safety. If requested by the Council the Service Provider shall provide the Council with a copy of its health and safety policy statement.
- 27.2. Scotland Excel and the Council must be notified immediately by the Service Provider of any risks to health or safety which are identified or arise during the Call-off including any known misuse of any Goods supplied.
- 27.3. While on the Premises, the Service Provider shall comply with any health and safety measures implemented by the Council in respect of the Premises and shall notify the Council immediately of any incident occurring while the Service Provider is on the Premises which causes or is likely to cause any personal injury or damage to property.
- 27.4. The Council shall notify the Service Provider of any health and safety hazards which may exist or arise at the Premises and which may affect the Service Provider in the performance of its duties under any Call-off.

## **28. Equality**

- 28.1. The Service Provider hereby confirms that to the best of its knowledge and belief it has complied with the Law 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 this Act in a manner which is proportionate and relevant to the nature of the contract.
- 28.2. The Service Provider agrees to perform its obligations under the Call-off in a non-discriminatory manner and shall promote equality and work towards reflecting best practice as identified in Guidance including the relevant statutory Codes of Practice issued by the Equality and Human Rights Commission.
- 28.3. 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 Call-off being provided to the Council. Where the requirement to comply with this equality duty exists, compliance with the requirements of Conditions 28.1 to 28.4 and Condition 28.10 will be evidence to the Council of the Service Provider meeting this requirement.
- 28.4. The Service Provider recognises that the Council has a responsibility to monitor the extent to which the performance of the Call-off extends to socially excluded groups. In recognition of this, the Service Provider agrees, where appropriate and practicable, to provide monitoring information to the Council in relation to employment and performance of the Call-off in respect of the protected characteristics as detailed in the Act, Part 2 Chapter 1.

- 28.5. 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.
- 28.6. The Service Provider shall notify the Council forthwith in writing as soon as it becomes aware of any investigation of, or proceedings brought against, the Service Provider and any decision or outcome being made from any proceedings under the Act in respect of a Call-off made by the Council; for the avoidance of doubt this is in addition to the reporting requirements under Condition 43 (Equality) of the General Conditions of Contract.
- 28.7. Where any investigation is undertaken by a person or body empowered to conduct such investigation, and/or proceedings are instituted in connection with any matter relating to the Service Provider's performance of the Call-off being in contravention of the Act, the Service Provider shall free of charge:
- 28.7.1. Provide any information requested in the timescales allotted unless to do so would be contrary to the Law;
  - 28.7.2. Attend any meetings as required and permit the Service Provider's staff to attend;
  - 28.7.3. Promptly allow access to and investigation of any document or data deemed to be relevant;
  - 28.7.4. Allow itself and any Service Provider's staff to appear as witness in any ensuing proceedings; and
  - 28.7.5. Co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 28.8. 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 or staff, and where there is a finding against the Service Provider in such investigation or proceedings, the Service Provider shall indemnify the Council with respect to all costs, charges and expenses arising out of or in connection with any such investigation or which the Council may have been ordered or required to pay to a third party.
- 28.9. In recognition of the Council's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies, under the Act the Service Provider may be subject to the requirement from time to time to complete a questionnaire and/or provide information to the Council on the extent and quality of the Service Provider's equalities and diversity policies. Good practice in this regard will be recognized by the Council, however, poor practice may result in the Council 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 the Council may take further action, up to and including the termination of the Call-off.

- 28.10. The Service Provider will extend the obligations under this Condition 28 to any arrangements with Sub-Contractors.

## **29.Environmental Policy**

- 29.1. The Service Provider shall not provide the Service in such a way or with any Goods or products so as to: endanger the health of any person; cause significant damage to the environment during Service provision or manufacture, disposal or use of the Goods or products; consume a disproportionate amount of energy during the period of delivery of the Service or manufacture, use or disposal of the Goods or products; cause unnecessary waste; or contain materials derived from threatened species or environments. If requested the Service Provider shall provide the Council with a copy of its environmental policy.

## **30.Ethical Requirements**

- 30.1. The Service Provider shall perform its obligations under each Call-off in accordance with the Council's ethical procurement and sourcing policy (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 the Council, the Service Provider shall provide the Council with a copy of its ethical procurement and sourcing policy (or equivalent).

## **31.Public Access to Information**

- 31.1. No term of this contract, whether express or implied, shall preclude the Council from making public, if required under the Freedom of Information (Scotland) Act 2002 (referred to in this Condition as "the Act") or the Environmental Information (Scotland) Regulations 2004 (referred to in this Condition as "the Regulations") or both details of all matters relating to this Call-off. The Council's interpretation of the Act and any exemptions therein will be final and conclusive. The Service Provider will facilitate the Council's compliance with its obligations under the Act and the Regulations and comply with any requests from the Council for that purpose.
- 31.2. Further, the Council may share any information regarding any Call-off or Purchase Order with the Competition and Markets Authority or any other relevant regulators.

## **32.Prevention of Corruption**

- 32.1. Each party shall be entitled to terminate the Call-off and recover any loss resulting if:
  - 32.1.1. 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 Call-off 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 Call-off or any other contract with the first party; or
  - 32.1.2. 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
  - 32.1.3. 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.
- 32.2. 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.
- 32.3. Each party reserves the right to terminate the Call-off 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 Call-off.
- 32.4. The terms of this Condition 32 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 Call-off, whether or not with that party's knowledge.

## **33.Prevention of Fraud**

- 33.1. Without prejudice to the terms of Condition 14 (Warranties and Representations) above, 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 the Council.
- 33.2. The Service Provider shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 33.3. If the Service Provider or its staff commits fraud in relation to the Call-off or any contract with the Council or Scotland Excel, the Council may:

- 33.3.1. terminate the Call-off and recover from the Service Provider the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Service and Goods and any additional expenditure incurred by the Council as a result of the Service Provider's fraud; or
- 33.3.2. recover in full from the Service Provider any loss sustained in consequence of any such fraud.

## 34.Data Protection

- 34.1. The Service Provider undertakes to comply with the provisions of 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.
- 34.2. The Service Provider undertakes to ensure that its staff are aware of their obligations under the Law relating to data protection.
- 34.3. 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 the Council, the Service Provider undertakes to comply with the provisions of the Law relating to data protection as though it were a Data Controller of the Council data, and will be expected by the Council to enter into a separate Data Processing Agreement where appropriate.
- 34.4. In any event, the Service Provider agrees to indemnify and keep the Council 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 clause 34 including, but not limited to, the imposition of any monetary penalty by the Information Commissioner.
- 34.5. 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 Council data may be held, as well as the physical security of buildings where information is held.
- 34.6. Access to Council data, provided under this Call-off, must be restricted by the Service Provider and only provided where its staff have a direct requirement to process it in connection with the purpose of this Call-off.

- 34.7. The Council reserve the right to visit Service Provider sites which are involved in receiving, storing or processing Council data to ensure that security controls continue to meet Council standards.
- 34.8. The Service Provider must notify the Council immediately of any risks or compromise to Council data or any incidents or concerns which may impact on the confidentiality, integrity or availability of Council data. Where risks are identified which are considered to have been ignored or an inappropriate response provided, the Council reserves the right to suspend the provision of information to the Service Provider until appropriate remedial action has been taken.

### **35. Disruption**

- 35.1. The Service Provider shall take reasonable care to ensure that in the performance of its obligations under any Call-off it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.
- 35.2. The Service Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under any Call-off.
- 35.3. 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 each Call-off.
- 35.4. If the Service Provider's proposals are considered insufficient or unacceptable by the Council acting reasonably, then, depending on the specific circumstances of any Call-off, a Call-off may be suspended or terminated with immediate effect by the Council by notice.

### **36. Publicity**

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

### **37. Company Profile**

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

### **38.Change of Legislation**

- 38.1. The Service Provider shall bear the cost of ensuring that the provision of the Service and any Goods delivered as part of the Service 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 Call-off was concluded being the date on which the Council awarded the Call-off to the Service Provider.
- 38.2. Where such reasonably unforeseeable amendments are necessary, the Council 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.
- 38.3. Where agreement between the Council and the Service Provider cannot be achieved under the immediately preceding paragraph the Council reserves the right either to not purchase the Services affected by the amendment or amendments or to terminate the Call-off in whole or in part.

### **39.Force Majeure**

- 39.1. Neither party shall be liable to the other party for any delay in performing, or failure to perform, its obligations under any Call-off to the extent that such delay or failure is a result of force majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform its obligations under each Call-off for the duration of such force majeure. However, if such force majeure prevents either party from performing its material obligations under any Call-off for a period in excess of 28 days, either party may terminate the Call-off with immediate effect by notice.
- 39.2. For the avoidance of doubt, no payment shall be made during the period when force majeure applies except in return for any Services provided and Goods delivered under the Call-off by the Service Provider.
- 39.3. Any failure or delay by the Service Provider in performing its obligations under any Call-off which results from any failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to force majeure only if that agent, Sub-Contractor or supplier is itself impeded by force majeure from complying with an obligation to the Service Provider.
- 39.4. 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.



## **40. Insolvency**

- 40.1. Without prejudice to any other rights, the Council shall have the right to terminate the Call-off by written notice immediately if the Service Provider is:
- 40.1.1. 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 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;
  - 40.1.2. an individual and is apparently insolvent or a petition is appointed for the Service Provider's bankruptcy or 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;
  - 40.1.3. 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 40.1.1 and 40.1.2 of this Condition occur in respect of the firm or any partner or any of those persons; or
  - 40.1.4. any event similar to those listed in 40.1.1., 40.1.2 or 40.1.3 above occurs under the Law of this or any other jurisdiction.

## **41. Assignment, Subcontracting etc.**

- 41.1. No part of a Call-off will be subcontracted or assigned by the Service Provider without the prior written consent of the Council. Any breach hereof shall entitle the Council to determine the whole Call-off or that part to which the breach relates or take any other remedies available. The agreement by the Council to any assignment or subcontracting of the Call-off whether in whole or in part shall not relieve the Service Provider of the Service Provider's liabilities under the Call-off.
- 41.2. Notwithstanding the terms of the immediately preceding paragraph the Service Provider may assign to another person (an "assignee"):
- 41.2.1. the right to receive payment of the price or any part thereof due to the Service Provider under this Call-off subject to deduction of sums in respect of which the Council exercises its right of recovery under Conditions 6

(Recovery of Sums Due),18 (Failure to Meet Specification) and 22 ( Determination of Call-off) in respect of the Call-off; and

41.2.2. all the related rights of the Council under the Call-off in relation to the recovery of sums due but unpaid.

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 handling invoices.

41.3. If the Service Provider wishes to subcontract, assign or otherwise dispose of the benefit or the burden of the Call-off or any part thereof, the Service Provider shall intimate to the Council no later than 60 days before the change in status is to take effect the name of the proposed party or parties involved and the nature of the change and thereafter shall provide all information that the Council may need to consider the Service Provider's request.

41.4. Where a change in the Control of a Service Provider occurs, the Council shall be entitled to consider whether the Service Provider remains suitable and eligible to perform the obligations under the Call-off and whether its consent to the change in Control may be given so that the Call-off and the Service Provider remain compliant with the Law. The Council shall not withhold or delay its consent unreasonably subject to:-

41.4.1. The Service Provider's compliance with the obligations noted below arising from its compliance with the Companies' Act 2006;

41.4.2. The Council's compliance with its procedural requirements permitting assignation; and

41.4.3. Compliance by all parties to the change in Control with the Law.

41.5. The Service Provider shall promptly notify the Council in writing:

41.5.1. of any material detrimental change in the financial standing or credit rating or both of the Service Provider; and/or

41.5.2. of 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.

41.6. 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:

- 41.6.1. The Service Provider must notify the Council promptly of the position in writing and provide such further information as may be reasonably required by the Council;
  - 41.6.2. 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
  - 41.6.3. Copies of any disclosures made in accordance with the requirements of the aforementioned Part 28 of the Companies Act 2006, the City Code and all applicable law and guidance must be provided to the Council at the time of issue.
- 41.7. Where the Service Provider has failed to comply with the requirements of this Condition 41 or the Council has decided that it cannot give its consent to the proposed assignment or subcontracting or the continuation of the Call-off following the change in Control, the Council shall be entitled, acting reasonably, to terminate the Contract under Condition 22 (Determination of Call-off).
- 41.8. No consent shall be given under this Condition 41 if the change proposed by the Service Provider does not comply with the requirements of the Regulations, particularly Regulation 72.

## **42. Serving of Notices**

- 42.1. Any notice or other communication to be given from one party to the other under these Standard Terms of Appointment shall be valid only if it is made in writing.
- 42.2. 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, or to Scotland Excel 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 other party or to Scotland Excel in the following manner:
- 42.2.1. For the Service Provider – [to be completed];
  - 42.2.2. For the Council – to the address set out in the Purchase Order;
  - 42.2.3. For Scotland Excel – The Director, Scotland Excel, Renfrewshire House, Cotton Street, Paisley, PA1 1AR.
- 42.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) working days after the day on which the letter was posted or sooner where the other party or Scotland Excel acknowledges receipt of such letters.

- 42.4. The Service Provider shall advise the Council and Scotland Excel, as soon as practicable, and in any event no later than seven (7) days after the change, of a change of address for service by sending a notice in accordance with this Condition.
- 42.5. The Council or Scotland Excel may change its address for service by sending a notice in accordance with this Condition.

### **43.Audit**

- 43.1. The Service Provider shall keep and maintain until the date falling 7 years after the date of termination or completion of the Call-off, whichever is the later, or as long a period as may be agreed between the parties, full and accurate records of each Call-off including the Service and Goods supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Service Provider shall on request afford the Council or the Council's representatives such access to those records as may be requested by the Council in connection with any Call-off.

### **44.Information Technology**

- 44.1. In performing the Service the Service Provider shall conform to the Council's information technology requirements as notified from time to time by the Council. This may include the provision, under licence, of appropriate management information software. The Council reserves the right to vary such information technology requirements in line with the development and updating of its systems. The Council shall endeavour to give the Service Provider reasonable and prior notice to any such variation.

### **45.Waiver**

- 45.1. 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 Call-off shall be a waiver of any such right or remedy nor shall it in any way affect its right subsequently to enforce such provisions.

### **46.Severability of Conditions**

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

### **47.Remedies Cumulative**

- 47.1. Except as otherwise expressly provided by these Standard Terms of Appointment, all remedies available to either party for breach of any Call-off are cumulative and may be

exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

#### **48. Conflicts in Interpretation**

- 48.1. In the event of, and only to the extent of, any conflict in interpretation between the Conditions of the Contract, these Standard Terms of Appointment, the Purchase Order and/or any document referred to in these Standard Terms of Appointment, the conflict shall be resolved in accordance with the following order of precedence:
- 48.1.1. the Conditions of the Contract;
  - 48.1.2. these Standard Terms of Appointment;
  - 48.1.3. the Purchase Order; and
  - 48.1.4. any other document referred to in these Standard Terms of Appointment.

#### **49. Exit and Service Transfer Arrangements including TUPE Compliance**

- 49.1. This Condition describes the duties and responsibilities of the Service Provider to the Council leading up to and covering the expiry or termination of a Call-off and the transfer of Service provision to a replacement service provider.
- 49.2. The objective of the exit and Service transfer arrangements described in this Condition is to ensure the smooth transition of the availability of the Service from the Service Provider to a replacement service provider at the termination or expiry of the Call-off.
- 49.3. The Service Provider agrees to indemnify and keep the Council fully indemnified in respect of any claims, costs, demands and liabilities arising from the provision of the incorrect information provided to the Council by the Service Provider to the extent that any such claim, cost, demand or liability directly and unavoidably arises from the use of the incorrect information in a manner that can reasonably be assumed to be proper in bidding for or providing Services similar to the Service.
- 49.4. The Service Provider hereby undertakes that it shall maintain the quality of Service no less than that prevailing previously during the term of the Call-off and comply with all requirements of the Call-off prior to the expiry date of the Call-off or any date of termination thereof.
- 49.5. No later than three (3) Months after the Commencement Date, the Service Provider shall prepare a Service Transfer Plan (“STP”) for review by the Council. The Council shall review the STP within twenty (20) working days of receipt from the Service Provider and shall notify the Service Provider of any suggested revisions to the STP. In this respect the Council will neither act unreasonably, capriciously nor vexatiously. Any such suggested

revisions shall be discussed and resolved within ten (10) working days. The agreed STP shall be signed as approved by both parties.

49.6. The STP shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful transfer of the Service, including but not limited to the following details:

49.6.1. [Not used]

49.7. The STP shall be reviewed and updated by the Service Provider. In this regard, the Service Provider shall provide a revised version of the STP to the Council no less frequently than every year calculated from the Commencement Date.

49.8. If the Call-off expires or is terminated, the Service Provider shall, where so requested by the Council, provide assistance to the Council to migrate the provision of the Service to a replacement service provider.

49.9. The parties hereto acknowledge that a Service Transfer (as defined by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”)) may be a situation to which TUPE and/or the Acquired Rights Directive may apply. In such circumstances, the Council or a replacement service provider would inherit liabilities in respect of employees of the Service Provider or any Sub-Contractor engaged in the provision of the Service and, accordingly the provisions in Conditions 49.10 and 49.17 shall apply.

49.10. Without prejudice to the Service Provider’s obligations under the TUPE, at any time and within twenty (20) working days of being requested to do so by the Council, the Service Provider shall fully and accurately disclose to the Council all “employee liability information” as defined by TUPE.

49.11. The Council shall be entitled to use this information for the purposes of TUPE and for the purposes of re-tendering. The Council may include this information in any documentation for the re-tender and may share this information with any prospective Service Provider of the Services.

The Service Provider shall indemnify the Council 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.

The Service Provider shall indemnify 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 Call off or the date of its ceasing to trade, whatever the case may be.

49.12. At least ten (10) working days prior to the date of Service Transfer, the Service Provider shall provide to the Council and any replacement service provider (as the case may be) a

final list of employees which shall transfer under TUPE (the “Transferring Service Provider Employees”).

- 49.13. Subject to compliance with the Law, the Council shall be permitted to use and disclose information provided by the Service Provider under Condition 49.10 for informing any Tenderer or other prospective replacement service provider.
- 49.14. The Service Provider represents and warrants that the information provided under this Condition shall be true and accurate.
- 49.15. The date of the earliest event for the purposes of the next succeeding provision Condition 49.16 is the earliest of the following:
  - 49.15.1. receipt of a notification from the Council of a Service Transfer or intended Service Transfer; or
  - 49.15.2. receipt of the giving of notice of early termination of the Call-off or any part thereof; or
  - 49.15.3. the date which is six (6) Months before the due expiry date of the Call-off.
- 49.16. From the date of the earliest event the Service Provider agrees that it shall not, and agrees to procure that its Sub-Contractors shall not, other than in the ordinary course of business, in respect of those employees engaged in the provision of the Service:
  - 49.16.1. Increase or reduce the total number of employees so engaged, or give notice to terminate the employment of any such employees; or
  - 49.16.2. Replace or re-deploy any such employee other than any replacement that is of equivalent grade, skills, experience and expertise; or
  - 49.16.3. Make, propose or permit any changes to their terms and conditions of employment.
- 49.17. The Service Provider shall, and shall procure that any Sub-Contractor shall, perform and discharge all its obligations in respect of all the Transferring Service Provider Employees up to and including the date of Service Transfer. The Service Provider shall indemnify the Council and any replacement service provider against all employee liabilities under TUPE arising from the Service Provider’s, or any Sub-Contractor’s, failure to perform and discharge any such obligation.
- 49.18. The Service Provider shall indemnify the Council and any replacement service provider against any employee liability under TUPE in respect of the Transferring Service Provider Employees arising from or as a result of:
  - 49.18.1. any act or omission by the Service Provider or any Sub-Contractor occurring on or before the Service Transfer Date or any other matter, event or

circumstance occurring or having its origin before the date of Service Transfer;

49.18.2. any claim made by or in respect of any person employed or formerly employed by the Service Provider or any Sub-Contractor other than a Transferring Service Provider Employee for which it is alleged that the Council or any replacement service provider may be liable by virtue of the Call-off and/or the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) and/or the Acquired Rights Directive; and

49.18.3. any claim made by or in respect of a Transfer Service Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Service Provider Employee relating to any act or omission of the Service Provider or any Sub-Contractor in relation to its or their obligations under Regulation 13 of TUPE except to the extent that the liability arises from the Council’s or any replacement service provider’s failure to comply with Regulation 13(4) of TUPE.

49.19. If any person who is not a Transferring Service Provider Employee claims, or it is determined, that his contract of employment has been transferred from the Service Provider or any Sub-Contractor to the Council or any replacement service provider pursuant to TUPE or the Acquired Rights Directive, then:

49.19.1. The Council or the replacement service provider will, within five (5) working days, when becoming aware of that fact, give notice in writing to the Service Provider;

49.19.2. The Service Provider may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) working days of the notification by the Council or the replacement service provider or take such other steps as it considers appropriate to deal with the matter.

49.20. If such offer is accepted, or if the situation has otherwise been resolved by the Service Provider, the Council or the replacement service provider shall immediately release the person from his employment.

49.21. If, after the fifteen (15) working day period specified in Condition 49.19 has elapsed:

49.21.1. No such offer of employment has been made;

49.21.2. Such offer has been made but not accepted; or

49.21.3. The situation has not otherwise been resolved, then

The Council or the replacement service provider may within five (5) working days give notice to terminate the employment of such person.



- 49.22. Subject to the Council or the replacement service provider acting in accordance with the provisions of this Condition, the Service Provider shall indemnify the Council and the replacement service provider against all employee liabilities arising out of termination of employment pursuant to the provisions of this Condition.
- 49.23. If any such person as is described in Condition 49.19 is neither re-employed by the Service Provider or any Sub-Contractor nor dismissed by the Council or replacement service provider within the timescale set out in this Condition 49.21, such person will be treated as a Transferring Service Provider Employee.
- 49.24. The Council shall use its reasonable endeavours to procure that the replacement service provider shall indemnify the Service Provider against all employee liabilities arising from the Council's or a replacement service provider's failure to perform and discharge any obligation and against any employee liabilities in respect of the Transferring Service Provider Employee arising from or as a result of any act or omission by the Council or a replacement service provider relating to the Transferring Service Provider Employee occurring after the service transfer date or any other matter, in the event or circumstance occurring or having its origin after the date of the Service Transfer.

#### **Provisions Where TUPE does not Apply**

- 49.25. In the event of a Service Transfer to which TUPE or the Acquired Rights Directive do not apply, the following provisions shall apply:
- 49.25.1. The Council or the replacement service provider can, in its discretion, make to any of their employees identified on the list provided by the Service Provider under Condition 49.19 above, an offer, in writing, to that employee under a new contract of employment to take effect on the day after the termination referred to in Condition 49.21;
- 49.25.2. When the offer has been made by the Council or replacement service provider and accepted by any employee or worker, the Service Provider shall permit, and shall procure that any Sub-Contractor shall permit, the employee or worker to leave his or her employment as soon as practicable, depending on the business needs of the Service Provider, or the Sub-Contractor, as the case may be, which could be without the employee or worker having worked his/her full notice period, if the employee so requests; and
- 49.25.3. If the employee does not accept any offer of employment made by the Council or replacement service provider, or no such offer is made, the employee shall remain employed by the Service Provider (or the relevant Sub-Contractor, as the case may be) and all employee liabilities in relation to the employee shall remain with the Service Provider or the relevant Sub-Contractor and the same shall indemnify the Council and any replacement

service provider against any employee liabilities, that either of them may incur in respect of any such employees of the Service Provider or the relevant Sub-Contractor.

## **50. Business Continuity Management**

- 50.1. The Service Provider shall take reasonable steps to ensure that it will continue to be able to fulfil its obligations in terms of the Call-off even when faced with unforeseen circumstances or events which might otherwise interfere with its ability to do so, and in particular it shall:
- 50.2. Take reasonable steps towards implementing a Business Continuity Management Plan as described in the HM Government Business Continuity Management Toolkit (version 1) (“The Toolkit”);
- 50.3. Take reasonable steps, throughout the duration of the Call-off, to develop and thereafter maintain and update a Business Continuity Management Plan (as defined and described in the Toolkit); and
- 50.4. At reasonable intervals when requested to do so, inform the Council in writing as to its progress with the tasks described in Conditions 50.2 and 50.3 so far as relating to the Services to be provided/Services to be performed to the Council in terms of the Call-off.
- 50.5. The Service Provider shall comply with the provisions contained within its Business Continuity Management Plan and the Service Provider shall ensure that it is able to implement the Business Continuity Management Plan at any time in accordance with its terms.
- 50.6. The Service Provider shall test the Business Continuity Management Plan on a regular basis (and in any event not less than once in every 12 Month period). The Council require the Service Provider to conduct additional tests of the Business Continuity Management Plan where the Council considers it necessary, including where there has been any change to the specification or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Business Continuity Management Plan. The Council reserves the right to attend any Business Continuity Management Plan test undertaken by the Service Provider.
- 50.7. If the Council requires an additional test of the Business Continuity Management Plan it shall give the Service Provider written notice and the Service Provider shall conduct the test within fourteen (14) working days in accordance with the Council’s requirements and the relevant provisions of the Business Continuity Management Plan.
- 50.8. Following each test, the Service Provider shall send to the Council a written report summarising the results of the test and shall promptly implement any actions or remedial

measures which the Council considers to be reasonably necessary as a result of those tests.

- 50.9. The Service Provider shall undertake regular risk assessments and/or business impact analysis in relation to the supply of the Services/performance of the Services not less than once every six (6) Months and shall provide the results of, and any recommendations in relation to those risk assessments or business impact analysis to the Council promptly in writing following each review.
- 50.10. The Service Provider shall inform the Council of any event that is likely to materially impact upon the supply of the Services/performance of the Services in terms of the Call-off or which may make it necessary to implement its Business Continuity Management Plan.

## **51. Community Benefits**

- 51.1. The Service Provider acknowledges that the Council will seek to achieve community benefits through its contract specifications for the Call-off where possible and in compliance with the Treaties, the Directive and the Regulations.

## **52. Application of Regulation 72**

No change shall be made to any Call-off if the intended change does not comply with the requirements of the Regulations, in particular Regulation 72.

## **53. Dispute Resolution**

- 53.1. The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with any Call-off within 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 finance director (or equivalent) of each party.
- 53.2. Nothing in this Condition shall:
  - 53.2.1. prevent the parties to the Call-off from complying with, observing and performing all their obligations in respect of the Call-off regardless of the nature of any dispute between them arising out of or in connection with the Call-off and notwithstanding the referral of any such matter or dispute for resolution under this Condition; nor
  - 53.2.2. diminish the parties to the Call-off's responsibilities in respect of contract administration.

- 53.3. Nothing in this Condition shall prevent the parties from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

## **54. Headings**

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

## **55. The Contract (Third Party Rights) (Scotland) Act 2017**

- 55.1. 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.

## **56. Law of Scotland**

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