

EAST LoTHIAN HOUSING ASSOCIATION

TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

1 INTRODUCTION

East Lothian Housing Association Limited, registered under the Co-Operative and Community Benefit Societies Act 2014 (with company number SP02266R) whose registered office is at 18-20 Market Street, Haddington, East Lothian, EH41 3JL; (“ELHA”) wishes to purchase the Goods and/or Services from the Supplier and the Supplier hereby agrees to provide such Goods and/or Services, in accordance with these Conditions.

2 DEFINITIONS

2.1 In these Conditions, the following words shall have the following meanings:

“**Applicable Law**” means all applicable statutes, statutory instruments, orders, rules, regulations, instruments, provisions and codes of practice in force from time-to-time including, but not limited to, health and safety legislation, Data Protection Legislation, the marking of hazardous goods legislation, the provision of data sheets for hazardous materials legislation and all provisions/regulations relating to food;

“**ELHA IPR**” means any and all IPR belonging to ELHA, or which ELHA has a right to use, and which are made available by ELHA in order to enable the Supplier to provide the Goods and/or Services;

“**Authorised**” means signed by an Authorised Officer;

“**Authorised Officer**” means an ELHA employee authorised, either generally or specifically, by ELHA to issue a Purchase Order;

“**Bribery Act**” means the Bribery Act 2010 (as amended from time to time) and any subordinate legislation made under that Act from time to time, together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

“**Business Days**” means any day from Monday to Friday inclusive (excluding all public, statutory and bank holidays) in Scotland when banks in Glasgow and Edinburgh are open for business;

“**Commencement Date**” means the date of commencement of the Contract, as specified in the Purchase Order, or as otherwise agreed between the parties;

“**Conditions**” means these terms and conditions;

“**Confidential Information**” means all information of a confidential or proprietary nature (whether in oral, written or electronic form)

belonging or relating to ELHA, its business affairs, finances, activities and the ELHA IPR;

“**Contract**” means the Purchase Order and the Supplier’s acceptance of the Purchase Order, incorporating these Conditions together with any applicable Order Amendments;

“**Data Protection Legislation**” means to the extent applicable in the United Kingdom, the EU GDPR, and the Data Protection Act 2018 and the UK GDPR and any other applicable laws or regulatory provisions relating to the processing of personal data and privacy as and when they come into force, including where applicable the guidance and codes of practice issued by the Information Commissioner or a relevant Central Government Body in relation to such laws;

“**Deliverables**” means those deliverables created, developed or otherwise resulting from the provision of the Services, including, without limitation, any deliverables described in the Contract;

“**Environmental Policy**” means ELHA’s environmental policy which sets out its obligations and guidelines in relation to environmentally friendly, sustainability and carbon offsetting processes and procedures;

“**EU GDPR**” Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (more commonly known as the General Data Protection Regulation);

“**Force Majeure Event**” has the meaning set out in Condition 28.1;

“**Goods**” means: (i) any goods agreed in the Contract to be purchased by ELHA from the Supplier (including any part or parts of them); and (ii) any Deliverables;

“**Goods Specification**” means any specification for the Goods agreed by ELHA and the Supplier;

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

“**IPR**” means all patents, rights to inventions, trade marks, registered designs (and any applications for any of the foregoing), copyright (including rights in software, such as object and source code), database rights, unregistered design rights, moral rights, rights in and to trade names, business names, domain names, product names and logos, databases, inventions, discoveries, know-how, trade secrets and any other intellectual or industrial

property rights in each and every part of the world together with all applications, renewals, revisions and extensions;

“ITT Conditions” means any conditions emanating from an invitation to tender;

“Key Personnel List” has the meaning set out in Condition 5.5;

“Order Amendment” means an amendment to the Goods or Services detailed in a Purchase Order and issued to the Supplier. Each Order Amendment issued shall have precedence over any earlier Order Amendment;

“Other Personnel List” has the meaning set out in Condition 5.7;

“Packaging” means any type of packaging used by the Supplier to package the Goods or materials used in the Services;

“Personal Data” has the meaning given the Data Protection Legislation;

“Price” means the price, exclusive of value added tax (**“VAT”**), payable by ELHA to the Supplier under the Contract for the full and proper performance by the Supplier of the Contract;

“Prohibited Act” means the following prohibited acts, whether by omission or commission (or, as appropriate, any breach of Applicable Laws):

- a) to directly or indirectly offer, promise or give any person working for or engaged by ELHA a financial or other advantage to:
 - induce that person to perform improperly a relevant function or activity; or
 - reward that person for improper performance of a relevant function or activity; or
 - directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
 - canvass any personnel of ELHA or its agents;
- b) committing any offence:
 - under The Public Contracts (Scotland) Regulations 2015;
 - under the Procurement Reform (Scotland) Act 2014;
 - under legislation creating offences concerning fraudulent acts;

- at common law concerning fraudulent acts relating to this Contract or any other contract with ELHA; or
- defrauding, attempting to defraud or conspiring to defraud ELHA

c) colluding:

- fixed or fix, adjusted or adjust, the Price by or in accordance with any agreement or arrangement with any supplier or potential supplier of the Goods and Services to ELHA;
- entered or enter into agreement or arrangement with any supplier or potential supplier of the Goods and Services to ELHA to the effect that such supplier or potential supplier refrained or refrains from tendering for the Goods or Services;
- communicated or communicate with any supplier or potential supplier of the Goods and Services to ELHA the amount or approximate amount of any tendering exercise, past present or future.

“Purchase Order” means ELHA’s Authorised written request (including any requests issued electronically) to purchase the Goods and/or Services from the Supplier, which shall be deemed to incorporate these Conditions;

“Reports” means the oral or written reports to be provided to ELHA by the Supplier, at ELHA’s request, detailing the progress and performance of the Services;

“Resultant IPR” means all IPR created, developed or otherwise resulting directly or indirectly from the provision of the Goods and Services including, without limitation, IPR in any Deliverables;

“Services” means the services to be supplied by the Supplier to ELHA under the Contract, as described in the Purchase Order or as otherwise agreed between the parties in writing from time to time;

“Services Specification” means the description or specification for the Services, agreed by ELHA and the Supplier;

“Sub-Contract” means any contract or agreement, or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services;

“Sub-Contractor” means the third parties that enter into a Sub-Contract with the Supplier;

“Supplier” means the company, partnership, business or individual who/which accepts the Purchase Order and supplies the Goods and/or Services;

“Supplier IPR” means all IPR owned by the Supplier, or to which the Supplier has rights, prior to the Commencement Date and which is or should be made available by the Supplier in order to enable ELHA to receive the Goods, and/or the Services or make use of the Deliverables;

“Supplier Party” means the Supplier's agents and contractors, including each Sub-Contractor; and

“Supplier Personnel” means all employees, agents, consultants and contractors of the Supplier or of any Sub-Contractor.

2.2 Headings in these Conditions are for ease of reference only and shall not affect the construction or interpretation of any Condition.

2.3 Words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

2.4 Reference to statutes, any statutory instrument, regulation, or order shall be construed as a reference to such statute, statutory instrument, regulation, or order as amended or re-enacted from time to time.

3 APPLICATION OF TERMS

3.1 Subject to Condition 3.3, these Conditions together with the ITT Conditions, the Purchase Order and any applicable Order Amendments shall constitute the whole agreement between ELHA and the Supplier and shall govern the Contract to the entire exclusion of all other terms and conditions (including the Supplier's terms and conditions or those implied by trade, custom or practice).

3.2 A Purchase Order shall be deemed to be accepted by the Supplier and the Contract shall be formed once the Supplier has communicated acceptance to ELHA or (if earlier) the Supplier delivers the Goods to ELHA or performs the Services.

3.3 Unless otherwise Authorised in writing by ELHA, these Conditions are the only conditions upon which ELHA is prepared to purchase Goods and/or Services from the Supplier.

3.4 The Contract supersedes all prior agreements and arrangements of whatever nature and sets out the entire agreement and understanding between the parties relating to its subject matter.

3.5 ELHA may vary any Contract by sending an Order Amendment to the Supplier. However, where ELHA find it necessary to give an order orally to the Supplier, the Supplier must comply with any such oral order in anticipation of written confirmation being issued in the form of an Order

Amendment within two Business Days of any oral agreement.

4 GOODS

4.1 The quantity and description of the Goods shall be as set out in the Purchase Order.

4.2 The Goods shall be of the best quality material and workmanship, be without fault and conform in all respects with: (i) the Purchase Order; and (ii) any Goods Specification.

4.3 The Goods shall be new (unless otherwise specified in the Purchase Order, but in any event always fit for purpose).

4.4 The Supplier shall indemnify ELHA in full against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) losses and damages arising from or incurred or paid by ELHA as a result of or in connection with:

4.4.1 breach of any warranty given by the Supplier in these Conditions;

4.4.2 any act or omission of the Supplier, the Supplier Personnel, or the Supplier Parties in supplying and delivering the Goods;

4.4.3 defective workmanship, quality or materials;

4.4.4 an infringement or alleged infringement of any IPR caused by the use, manufacture or supply of the Goods; and

4.4.5 any claim made against ELHA in respect of any liability, loss, damage, injury, cost or expense sustained by ELHA's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Supplier.

4.5 ELHA's rights under these Conditions are in addition to the statutory conditions implied in favour of ELHA by the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 (both as amended from time-to-time).

5 SERVICES

5.1 The Supplier shall provide the Services with effect from the Commencement Date in accordance with any agreed Services Specification.

5.2 The Supplier will provide the Services:

5.2.1 in a proper, diligent, expeditious and professional manner and with all reasonable skill and care and in accordance with best practice in the industry;

- 5.2.2 dutifully, timeously and in good faith;
- 5.2.3 in all respects in accordance with any policies or guidance supplied by ELHA; and
- 5.2.4 in accordance with Applicable Law.
- 5.3 The Supplier warrants, undertakes and represents that:
- 5.3.1 it has full capacity and authority and all necessary licences, permits and consents to enter into and to perform the Contract; and
- 5.3.2 the provision of the Services will not infringe the IPR of any third party.
- 5.4 The Supplier shall deliver to ELHA the Deliverables at the times and on the dates specified in the Purchase Order (or as otherwise agreed between the parties), to the satisfaction of ELHA. Time shall be of the essence.
- 5.5 The Supplier shall provide ELHA with a list of any of the Supplier's personnel who are considered key to the provision of the Services ("**Key Personnel List**") and such Key Personnel List shall be deemed to be incorporated into the Purchase Order.
- 5.6 The Supplier shall not, without prior written approval from ELHA, remove or add any person from or to the Key Personnel List.
- 5.7 If instructed to do so by ELHA, the Supplier shall also provide a list of the names of all other persons who may be involved in the provision of the Services ("**Other Personnel List**").
- 5.8 The Supplier must provide details of the nature of the Services provided by personnel on the Key Personnel List and the Other Personnel List, evidence of their identity, and any other supporting information which ELHA may reasonably require.
- 5.9 If the Contract requires any works or Services to be performed on ELHA's premises, the Supplier shall ensure that it, and shall procure that, the Supplier Parties and the Supplier Personnel shall comply with all Applicable Laws and all policies that ELHA notifies to the Supplier from time to time.
- 5.10 The Supplier shall indemnify ELHA, in full, against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) losses and damages arising from or incurred or paid by ELHA as a result of or in connection with:
- 5.10.1 breach of any warranty given by the Supplier in relation to the Services;
- 5.10.2 any act or omission of the Supplier, a Supplier Party or the Supplier Personnel in supplying, delivering and performing the Services; and
- 5.10.3 any interruption to business continuity in accordance with Condition 27 below.
- ## 6 HEALTH & SAFETY
- 6.1 The Supplier undertakes that they and their employees, agents and sub-Contractors will at all times comply with all health and safety requirements relating to the carrying out of the services under the Contract. Such requirements include in addition to statutory laws and regulations any codes of practice and British Standards or their equivalent relating to Health or Safety which may be applicable to the performance of the Contract.
- 6.2 When the Supplier, their employees, agents or sub-Contractors are required to carry out services on ELHA premises then the Supplier undertakes that in carrying out the work they shall additionally comply with all ELHA rules and practices relating to health and safety and the conduct of persons working on ELHA premises
- ## 7 INSPECTION/REPORTING
- 7.1 The Supplier will provide ELHA with the Reports, all to the reasonable satisfaction of ELHA.
- 7.2 The Supplier shall provide, and shall procure that the Supplier Parties shall provide, ELHA with the right to check progress of the Supplier's Services or the Services being provided by the Supplier Parties at all reasonable times, and shall have the right to inspect and to reject Goods and/or Services that do not comply with the Contract. Any inspection or approval shall not relieve the Supplier from its obligations under this Contract.
- ## 8 DELIVERY
- 8.1 Unless otherwise agreed in writing by ELHA, any Goods shall be delivered, carriage paid, to such reasonable location as ELHA shall direct. The Supplier shall off-load the Goods, at its own risk, as directed by ELHA.
- 8.2 The dates for delivery shall be as specified in the Purchase Order and deliveries shall be made during normal business hours on Business Days. If no dates are specified, delivery will be within twenty eight (28) days of the date of the Purchase Order. Time for delivery shall be of the essence of the Contract.
- 8.3 The Supplier shall, on request, ensure that each delivery is accompanied by a delivery note which shows the Purchase Order number, date of order, number of packages and its contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 8.4 Where ELHA agrees in writing to accept delivery by instalments, the Contract will be construed as a

single contract in respect of each instalment. Nevertheless, failure by the Supplier to deliver any one instalment shall entitle ELHA at its option to treat the whole Contract as repudiated.

8.5 If the Goods are delivered to ELHA in excess of the quantities ordered, ELHA shall not be bound to pay for the excess and any excess will be and will remain at the Supplier's risk and will be returnable at the Supplier's expense.

8.6 If the Supplier, or the Supplier's carrier, delivers any Goods at the wrong time or to the wrong place, then ELHA may deduct from the Price any resulting costs of storage or transport.

8.7 All Goods shall be properly packed, secured and despatched at the Supplier's expense and shall be delivered in good condition.

9 RISK/TITLE

The Goods shall remain at the risk of the Supplier until delivery to ELHA is complete (including off-loading and stacking) when ownership of, and risk in, the Goods shall pass to ELHA. This shall not prejudice ELHA's right of rejection.

10 REMEDIES

10.1 Without prejudice to any other right or remedy which ELHA may have, if: (i) the Goods are not delivered on the due date, (ii) the Goods do not conform with the Contract; or (iii) the Supplier fails to commence the provision of, or to perform, the Services in accordance with the Contract, ELHA reserves the right to:

10.1.1 rescind the Purchase Order or cancel the Contract, in whole or in part, and refuse to accept any subsequent delivery of the Goods, or performance of the Services, which the Supplier attempts to make;

10.1.2 give the Supplier a reasonable opportunity, at the Supplier's expense, either to remedy any defect in the Goods and/or the Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

10.1.3 claim damages for any additional costs, loss or expenses incurred by ELHA which are in any way attributable to the Supplier's failure to deliver the Goods and/or Services on the due date;

10.1.4 recover from the Supplier any expenditure reasonably incurred by ELHA in obtaining any Goods and/or Services (in substitution) from another Supplier; and/or

10.1.5 reject the Goods in whole or in part whether or not paid for in full or in part and be released from any obligation to pay for the Goods and/or Services and the

Supplier must collect all rejected Goods, at its own expense.

10.2 In the event of cancellation under this Condition 9, the Supplier shall promptly repay any moneys paid under the Contract without any retention or offset whatsoever. Cancellation of the Purchase Order under this Condition shall not affect any other rights ELHA may have.

11 PRICE AND PAYMENT

11.1 The Price (exclusive of VAT) for the Goods and Services shall be as stated in the Purchase Order. No increase in the Price may be made without the prior written consent of ELHA.

11.2 ELHA shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown on its own terms of sale.

11.3 Subject to the Supplier performing the Services and delivering the Goods and/or Deliverables to the satisfaction of ELHA, the Supplier may invoice ELHA. ELHA will pay the Price to the Supplier within thirty (30) days of receipt by ELHA of an agreed VAT invoice for sums properly due. Time for payment shall not be of the essence of the Contract.

11.4 The Supplier shall ensure that all such invoices include ELHA's Purchase Order number, a description of the Goods and/or Services, and the period to which it relates.

11.5 All expenses that may be incurred by the Supplier (including travel costs) must be agreed in advance and will only be payable by ELHA subject to the Supplier:

11.5.1 obtaining ELHA's prior written Authorised consent to such expenses; and

11.5.2 providing receipts or other such evidence to prove such expenditure.

11.6 The Supplier shall pay all taxes and other outgoings or expenses payable in consequence of the Contract and the Supplier shall indemnify ELHA in respect of any demand, costs or expense suffered by ELHA, whether during the period of the Contract or following termination of the Contract (howsoever caused) or otherwise in relation to any tax or employer's National Insurance contributions or other expense payable in respect of the Supplier, the Supplier Parties or the Supplier Personnel or in relation to the provision of Goods and/or Services.

11.7 Where the Supplier enters into a Sub-Contract for the purpose of performing the Contract, the Supplier shall cause a term to be included in such Sub-Contract:

11.7.1 which requires payment to be made to the Sub-Contractor within a specified period

- not exceeding 30 days from receipt of a valid invoice as defined by the Sub-Contract requirements and provides that, for the purpose of payment alone, where ELHA has made payment to the Supplier and the Sub-Contractor's invoice includes Services in relation to which payment has been made by ELHA then, to the extent that it relates to such Services, the invoice shall be treated as valid and payment shall be made to the Sub-Contractor without deduction.
- 11.7.2 which notifies the Sub-Contractor that the contract forms part of a larger contract for the benefit of ELHA and that should the Sub-Contractor have any difficulty in securing the timely payment of an invoice that matter may be referred by the Sub-Contractor to ELHA; and
- 11.7.3 in the same terms as that set out in this clause 10.7 (including for the avoidance of doubt this clause 10.7.3) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and Sub-Contractor as the case may be.
- 11.8 The parties will pay interest on any amount payable under the Contract not paid on the due date, from the due date to the date of payment, at two (2) per cent per annum above the base lending rate of the Royal Bank of Scotland plc from time to time.
- 11.9 Payment by ELHA shall be without prejudice to any claims or rights which ELHA may have against the Supplier, and shall not constitute any admission by ELHA as to the performance by the Supplier of its obligations under the Contract.
- 11.10 Without prejudice to any other right or remedy, ELHA reserves the right to set off any amount owing at any time from the Supplier to ELHA against any amount payable by ELHA to the Supplier under the Contract, or any other contract between ELHA and the Supplier.
- 11.11 The Supplier shall promptly make good at the Supplier's expense any defect in the Goods that ELHA discovers under proper usage during the greater of: (i) eighteen (18) months from the date of delivery; or (ii) the Supplier's own warranty period for the Goods.
- 11.12 Repairs or replacements will themselves be subject to the same warranty period as set out in Condition 10.11, with such warranty commencing from the date of completion of a repair or receipt of replacement Goods.
- 11.13 The Supplier will ensure that compatible and fit for purpose spares are available, at a reasonably commercial cost, to facilitate repairs (where applicable) for a period of at least ten (10) years from the date of delivery of the Goods.
- ## 12 INTELLECTUAL PROPERTY
- 12.1 All right, title and interest in and to any ELHA IPR shall remain the property of, and vested in, ELHA.
- 12.2 All right, title and interest in and to any Supplier IPR shall remain the property of, and vested in, the Supplier.
- 12.3 The Supplier hereby grants to ELHA a perpetual, irrevocable, royalty free, transferable, worldwide non-exclusive licence (with the right to grant sub-licences) to use the Supplier IPR for the purpose of exploiting the Resultant IPR and/or using and/or otherwise disposing of the Deliverables.
- 12.4 ELHA hereby grants to the Supplier a non-exclusive, non-transferable and limited licence to use ELHA IPR for the sole purpose of carrying out its obligations under the Contract.
- 12.5 By accepting a Purchase Order or performing under a Contract, the Supplier agrees that the Resultant IPR will belong to and upon its creation vest in ELHA. The Supplier hereby assigns to ELHA from the date of creation, free from any encumbrances, its whole right, title and interest including (with effect from their creation) future rights in the Resultant IPR.
- 12.6 The Supplier shall assign to ELHA on request and free of charge all rights in the Resultant IPR which have not been assigned under Condition 11.5 and shall execute any document and do anything as may be required to ensure that all Resultant IPR is vested in ELHA and the Supplier shall deliver all supporting materials and documentation required in order to make effective use of the Resultant IPR.
- 12.7 During the period of the Contract, and at all times thereafter, the Supplier shall (and shall procure that all third parties, employees and individuals shall) execute and perform (at the Supplier's expense) all such applications, assignments, documents and acts as may be required by ELHA for the purpose of giving effect to this Condition 11 and/or obtaining and enforcing any legal protection in respect of such IPR and in such countries as ELHA may, in its absolute discretion, determine, at ELHA's expense.
- 12.8 The Supplier warrants, represents and undertakes to ELHA that:
- 12.8.1 none of the IPR created or used by the Supplier in connection with the Goods and Services is or will be the subject of a claim and there are no grounds, facts or other circumstances which may give rise to the same;

- 12.8.2 it is and will be the sole and absolute legal owner of the Supplier IPR, or is validly licensed to make such use of the Supplier IPR in terms of written licences, and that ELHA will be free to use, licence, or otherwise transfer such Supplier IPR without any third party claims, liens, charges or encumbrances of any kind; and
- 12.8.3 it is and will be the sole and absolute legal owner of the Resultant IPR until such Resultant IPR is assigned in terms of Conditions 11.5 and 11.6 and that such Resultant IPR is not subject to any third party claims, liens, charges or encumbrances of any kind.
- 12.9 The Supplier shall indemnify ELHA against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) of any IPR in connection with the receipt and/or use of the Goods and Services, the Resultant IPR, the Supplier IPR or Deliverables, or the performance by the Supplier of any obligation in terms of the Contract.
- 12.10 The Supplier hereby irrevocably waives in favour of ELHA any moral rights it may have in terms of Chapter IV of Part I of the Copyright, Designs and Patents Act 1988, and any similar rights available in any part of the world and shall procure that all Supplier Personnel, third parties and Sub-Contractors used in the provision of the Goods and the performance of the Services shall similarly waive such moral rights.
- 13 DATA PROTECTION**
- 13.1 The Supplier warrants that it will at all times comply with all Data Protection Legislation in connection with the provision of the Goods and the performance of the Services under the Contract and shall be bound by, and only undertake processing of Personal Data in connection with the provision of the Goods and the performance of the Services under the Contract.
- 13.2 The Supplier will, at ELHA's discretion, either return or delete any personal data provided by ELHA upon completion of a Purchase Order.
- 14 CONFIDENTIALITY**
- 14.1 The Supplier shall (and shall procure that the Supplier Personnel and Supplier Parties shall) keep secret and confidential at all times both during and after the Contract, any and all Confidential Information which comes in to its possession at any time either before, during or after the period of the Contract.
- 14.2 The Supplier shall not use, copy, disclose or divulge such Confidential Information to any third party except with the express written consent of ELHA. For the avoidance of doubt, any such permitted disclosure shall not affect the ownership of such Confidential Information.
- 14.3 The Supplier shall disclose the Confidential Information only to those of its officers and employees to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under the Contract, including but not limited to, the Supplier Personnel and Supplier Parties, and to procure that such parties are made aware of and agree in writing to observe the obligations in this Condition 13.
- 14.4 The provisions of this Condition 13 shall not apply to information which:
- 14.4.1 is or comes into the public domain through no fault of the Supplier;
- 14.4.2 is lawfully received by the Supplier from a third party free of any obligation of confidence at the time of its disclosure;
- 14.4.3 is independently developed by the Supplier;
- 14.4.4 is required by law, by court or governmental order to be disclosed provided, however, that the Supplier will promptly notify ELHA of such requirements and shall take reasonable steps to coordinate with ELHA in contesting or limiting such requirement or in protecting ELHA's rights prior to disclosure;
- 14.4.5 ELHA requires to obtain in relation to Suppliers who are individuals such as references sought from banks, existing or past clients, or other referees proposed by the Supplier; or
- 14.4.6 is required to be disclosed by ELHA in accordance with Conditions 13.6, 13.7 and 14 below.
- The burden of proving that any of the foregoing exceptions apply shall be upon the recipient.
- 14.5 The obligations under this Condition 13 shall survive the variation, expiry or termination of the Contract.
- 15 FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION**
- 15.1 ELHA adheres to the Freedom of Information (Scotland) Act 2002 (as amended) ("FOISA") and the Environmental Information (Scotland) Regulations 2004 (as amended) ("EIRs"). ELHA may disclose information, including but not limited to information belonging to or relating to the Supplier (including but not limited to the

- Supplier's Confidential Information) to the extent that it is required to do so under FOISA and/or EIRs.
- 15.2 The Supplier acknowledges that disclosure may be made of such information relating to the outcome of the procurement process as may be required to be published in the Official Journal of the European Union or elsewhere in accordance with EU Directives, Applicable Laws or Government policy on the disclosure of information regarding government contracts.
- 16 PREVENTION OF BRIBERY**
- 16.1 The Supplier:
- 16.1.1 shall not, and shall procure that any Supplier Party and all Supplier Personnel shall not, in connection with this Contract, commit a Prohibited Act; and
- 16.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by ELHA, or that an agreement has been reached to that effect, in connection with the execution of a Contract, excluding any arrangement of which full details have been disclosed in writing to ELHA before execution of a Contract.
- 16.2 The Supplier shall:
- 16.2.1 if requested, provide ELHA with any reasonable assistance, at ELHA's reasonable cost, to enable ELHA to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act; and
- 16.2.2 within thirty (30) Business Days of the Commencement Date, and annually thereafter, certify to ELHA in writing (such certification to be signed by an officer of the Supplier) compliance with this Condition 15 by the Supplier and all persons associated with it or other persons who are supplying Goods or Services in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as ELHA may require or may reasonably request.
- 16.3 The Supplier shall have an anti-bribery policy and an anti-money laundering policy (which shall be disclosed to ELHA) to prevent any Supplier Party or Supplier Personnel from committing a Prohibited Act and shall enforce them, or adhere to them, where appropriate.
- 16.4 If any breach of Condition 15.1 is suspected or known, the Supplier must notify ELHA immediately.
- 16.5 If the Supplier notifies ELHA that it suspects or knows that there may be a breach of Condition 15.1, the Supplier must respond promptly to ELHA's enquiries, co-operate with any investigation, and allow ELHA to audit books, records and any other relevant documentation. This obligation shall continue for seven (7) years following the expiry or termination of this Contract.
- 16.6 ELHA may terminate this Contract by written notice with immediate effect if the Supplier, Supplier Party or Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches Condition 15.1.
- 16.7 Any notice of termination under Condition 15.6 must specify:
- 16.7.1 the nature of the Prohibited Act;
- 16.7.2 the identity of the party whom ELHA believes has committed the Prohibited Act; and
- 16.7.3 the date on which this Contract will terminate.
- 16.8 Despite Condition 34 (Arbitration), any dispute relating to:
- 16.8.1 the interpretation of Condition 15; or
- 16.8.2 the amount or value of any gift, consideration or commission,
- shall be determined by ELHA and its decision shall be final and conclusive.
- 16.9 Any termination under Condition 15.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to ELHA.
- 17 ANTI-FACILITATION OF TAX EVASION**
- 17.1 The Supplier shall:
- 17.1.1 not engage in any activity, practice or conduct which would constitute either:
- 17.1.1.1 a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
- 17.1.1.2 a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
- 17.1.2 have and shall maintain in place throughout the term of this Contract such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the

- Supplier) and to ensure compliance with Condition 16.1.1;
- 17.1.3 promptly report to ELHA any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017;
- 17.1.4 within three months of the date of this Contract, and annually thereafter, certify to ELHA in writing signed by an officer of the Supplier, compliance with this Condition 16 by the Supplier and all persons associated with it under Condition 16.2. The Supplier shall provide such supporting evidence of compliance as ELHA may reasonably request.
- 17.2 The Supplier shall ensure that any person associated with the Supplier who is performing Services and providing Goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Condition 16 ("**Relevant Terms**"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to ELHA for any breach by such persons of any of the Relevant Terms.
- 17.3 ELHA may terminate this Contract by written notice with immediate effect if the Supplier, Supplier Party or Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches Condition 16.1.
- 17.4 For the purposes of this Condition 16, the meaning of reasonable prevention procedure shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017 and a person associated with the Supplier includes but is not limited to any sub-contractor of the Supplier.
- 18 COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS**
- 18.1 In performing its obligations under the Contract, the Supplier shall:
- 18.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including, but not limited to, the Modern Slavery Act 2015;
- 18.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
- 18.1.3 include in contracts with its direct sub-contractors and suppliers provisions which are at least as onerous as those set out in this Condition 17;
- 18.1.4 notify ELHA as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract; and
- 18.1.5 maintain a complete set of records to trace the supply chain of all Goods and Services provided to ELHA in connection with this Contract; and permit ELHA and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this Condition 17.
- 18.2 The Supplier represents and warrants that it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 18.3 ELHA may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this Condition 17.
- 19 PUBLIC RECORDS (SCOTLAND) ACT 2011**
- 19.1 If the Supplier has been appointed by ELHA to carry out any Services which constitute a function of ELHA, the Supplier acknowledges and agrees that the Public Records (Scotland) Act 2011 may apply and any records that are created by the Supplier in carrying out such Services shall become the public records of ELHA.
- 20 AUDIT RIGHTS**
- 20.1 The Supplier shall keep full and accurate books, records and accounts with respect to the subject matter of the Contract and all expenditures which are reimbursable by ELHA ("**Audit Records**").
- 20.2 The Audit Records shall include records of all the hours worked and costs incurred by the Supplier and by any employees or agents of the Supplier paid for by ELHA. ELHA shall have the right to audit and inspect the Audit Records during normal business hours by giving the Supplier no less than one (1) day's prior written notice of ELHA's intention to carry out such audit. ELHA shall provide the Supplier with all reasonable co-operation and assistance in relation to any such audit.
- 21 INSURANCE**
- 21.1 The Supplier shall hold satisfactory insurance cover with a reputable insurer to fulfil the Supplier's insurance obligations for the duration of this Contract and two years thereafter, which includes:

- 21.1.1 the ITT Conditions;
 - 21.1.2 public liability insurance cover of at least one million pounds sterling (£1,000,000);
 - 21.1.3 employers liability insurance cover of at least five million pounds sterling (£5,000,000); and
 - 21.1.4 where relevant, professional indemnity insurance of at least one million pounds sterling (£1,000,000); or
 - 21.1.5 if the Supplier is an individual or a sole trader, reasonable insurance policies which cover the individual or sole trader Supplier's liabilities under the contract; or
 - 21.1.6 such other amount as the parties will agree in writing.
- 21.2 Satisfactory evidence of such insurance and payment of current premiums shall be shown by the Supplier to ELHA upon request.
- 22 LIMITATION OF LIABILITY**
- 22.1 Neither party excludes or limits liability to the other party for death or personal injury caused by any negligent act or omission or wilful misconduct.
- 22.2 ELHA does not accept liability for:
- 22.2.1 indirect, special or consequential loss or damage;
 - 22.2.2 loss of business profits, salary, business revenue, goodwill, or anticipated savings; or
 - 22.2.3 loss which could have been avoided by the Supplier through reasonable conduct or by the Supplier taking reasonable precautions.
- 22.3 Subject to Conditions 21.1 and 21.2, ELHA's liability under any Contract shall in no event exceed the Price paid by ELHA to the Supplier.
- 22.4 Where the Supplier is an individual, he must confirm he is regarded by both the Inland Revenue and the Department of Works and Pensions as self-employed and accordingly shall indemnify ELHA against any tax, national insurance contribution or similar tax, duty or levy for which ELHA might otherwise be considered liable in respect of the Supplier by reason of the Contract.
- 23 TERM AND TERMINATION**
- 23.1 ELHA shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier seven (7) days' written notice.
- 23.2 The Contract may be terminated by written notice with immediate effect if:
- 23.2.1 ELHA commits a material breach that it fails to remedy within thirty (30) days of being requested to do so by the Supplier;
 - 23.2.2 the Supplier commits a material breach that it fails to remedy within seven (7) days of being requested to do so by ELHA; or
 - 23.2.3 where the Supplier is an individual, if he dies or is adjudged to be incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 (as amended from time to time) or Part V of the Mental Health (Scotland) Act 1984 (as amended from time to time).
- 23.3 The Supplier shall notify ELHA in writing immediately upon the occurrence of any of the following events:
- 23.3.1 where the Supplier is an individual:
 - 23.3.1.1 if a petition is presented for the Supplier's bankruptcy or the sequestration of this estate; or
 - 23.3.1.2 a criminal bankruptcy order is made against the Supplier; or
 - 23.3.1.3 to avoid being made bankrupt, he makes any composition, arrangement, conveyance or assignment with or for the benefit of creditors; or
 - 23.3.1.4 if an administrator or trustee is appointed to manage his affairs.
 - 23.3.2 where the Supplier is a firm or a number of persons acting together in any capacity:
 - 23.3.2.1 if any event in 22.3.1 or 22.3.3 of this Condition occurs in respect of any partner in the firm or any of those persons; or
 - 23.3.2.2 a petition is presented for the Supplier to be wound up as an unregistered company;
 - 23.3.3 where the Supplier is a company:
 - 23.3.3.1 if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order; or
 - 23.3.3.2 the company makes a composition or arrangement with its creditors; or
 - 23.3.3.3 an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court; or
 - 23.3.3.4 possession is taken of any of its property under the terms of a floating charge (i.e. security).
- 23.4 ELHA shall be entitled to terminate the Contract with immediate effect on the occurrence of any of the events described in Condition 22.3 above.

- 23.5 Subject to Condition 15, if the Supplier, any Supplier Party or any Supplier Personnel, breach any Applicable Laws, the Supplier shall immediately inform ELHA of the details of such breach and the Contract may be terminated immediately, at ELHA's discretion.
- 23.6 Termination of the Contract shall be without prejudice to any rights of either party under the provisions of the Contract existing at the date the Contract is terminated (including the right of either party to recover all sums due to that party up to such date of termination).
- 23.7 Upon termination of the Contract, the Supplier shall return to ELHA any document, paper, materials or information (including copies) supplied by or obtained from ELHA in connection with the Contract.
- 23.8 The provisions of Conditions 2, 11 to 21 and 29 to 34 shall survive termination of the Contract for any reason and shall remain in full force and effect.

24 DISCRIMINATION AND EQUALITY

The Supplier shall not unlawfully discriminate within the meaning and scope of the current provisions of the Equality Act 2010 (as amended from time to time) relating to discrimination in employment. The Supplier shall also take all reasonable steps to ensure the observance of these provisions by all other persons (including any Supplier Party or Supplier Personnel) acting on behalf of the Supplier in the execution of the Contract.

25 ENVIRONMENTAL POLICY

- 25.1 During the performance of the Contract, the Supplier agrees to comply (and shall procure that the Supplier Personnel and Supplier Parties comply) at all times with ELHA's Environmental Policy and the Supplier is also obliged to operate with a general consideration for environmentally friendly processes and procedures.

26 ASSIGNATION

- 26.1 ELHA may at any time assign, charge or otherwise transfer the Contract or any of its rights or obligations under it.
- 26.2 The Supplier shall not, and shall not purport to, assign, charge, sub-contract or otherwise transfer the Contract or any rights or obligations under it without ELHA's prior written consent.

27 NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to, or shall operate to, create between the parties a partnership agency, association, joint venture, employment relationship or other co-operative entity.

28 BUSINESS CONTINUITY

- 28.1 The Supplier shall ensure that it has adequate business continuity policies and procedures in place.
- 28.2 If, for any reason, the Supplier is unable to provide the Goods or Services to ELHA, the Supplier shall immediately inform ELHA of the interruption in the provision of Goods and Services.
- 28.3 Should an interruption to the provision of Goods or Services occur as in Condition 27.2, the Supplier shall be obliged to find, at the Supplier's expense, a replacement supplier in order that the provision of Goods or Services under the Contract may be carried out in the interim to the satisfaction of ELHA.

29 FORCE MAJEURE

- 29.1 Neither party shall be in breach of the Contract, nor liable for any failure or delay in performance of its obligations under the Contract arising from or attributable to acts, events, omissions or circumstances beyond its control, including but not limited to, acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion or civil authority including acts of local government and parliamentary authority; breakdown of equipment; telecommunication failures; war; terrorism; extreme adverse weather conditions; and labour disputes of whatever nature and for whatever cause arising including, without prejudice to the generality of the foregoing, work to rule, overtime, strikes and lockouts ("**Force Majeure Event**").

- 29.2 If either party is prevented or delayed in the performance of any of its obligations under the Contract by Force Majeure, that party shall serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall, subject to service of such notice and having taken all reasonable steps to avoid such prevention or delay, have no liability in respect of the performance of its obligation as prevented by the Force Majeure Event and during the continuation of such event, and for such time after they cease as is necessary for that party, using all reasonable endeavours, to regain its effective operations in order for it to perform its obligations.

- 29.3 If either party is prevented from performance of its obligations for a continuous period in excess of six (6) months due to a Force Majeure Event either party may terminate the Contract immediately on service of written notice upon the other party.

30 VARIATION

No variation to the Contract, except from an Order Amendment, shall be effective unless in writing and signed by an Authorised Officer of each party.

31 SEVERABILITY

If and in so far as any part or provision of these Conditions is or becomes void or unenforceable it shall be deemed not to be or never to have been or formed a part of the Contract and the remaining provisions of the Contract shall continue in full force and effect.

32 WAIVER

The failure of either party to exercise or enforce any right conferred on that party by the Contract shall not be deemed to be a waiver of any such right or operate to bar the exercise or enforcement thereof at any time or times thereafter.

33 NOTICES

33.1 All notices and communications required to be sent to the Supplier under this Contract shall (if a notice) be made in writing and sent by first class mail to the Supplier's registered or head office and shall be deemed to have reached the Supplier on the next Business Day following the date of posting or (if a communication) sent to the email address provided by the Supplier to ELHA.

33.2 All notices and communications required to be sent to ELHA under this Contract shall (if a notice) be made in writing and sent by first class mail to ELHA to the address of the individual named in the Purchase Order and shall be deemed to have reached ELHA on the next Business Day following the date of posting or (if a communication) to the email address of the individual on the Purchase Order.

34 THIRD PARTY RIGHTS

Save to the extent expressly set out in the Contract, the Contract is not intended nor shall it create any rights, entitlement, claims or benefits enforceable by any person that is not a party to it.

35 ARBITRATION

35.1 All disputes, differences or questions between the Supplier and ELHA with respect to any matter relating to the Contract (other than in specific matters where the Contract makes clear that the decisions of ELHA are to be final and conclusive or where special provision for arbitration has been made elsewhere in the Contract) shall be referred to a single arbiter mutually chosen by both parties. Failing agreement, an alternative arbiter shall be nominated by the President of the Law Society of Scotland on the application of either party. Any such reference to arbitration shall be deemed to be an agreement to refer to arbitration within the meaning of the Arbitration (Scotland) Act 2010 (as amended from time to time).

35.2 The commencement of arbitration proceedings shall not prevent the parties commencing or

continuing court proceedings in accordance with Condition 35 below.

36 GOVERNING LAW

Subject to Condition 34, the Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Scots law and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.

