**STANDARD TERMS AND CONDITIONS**

1. **Definitions and Interpretation**
   1. **Initial Definitions.** In these terms and conditions, unless the context otherwise requires:
      1. "**this Agreement**" means the agreement concluded between Falkirk Council and the Contractor formed by the Contract Award Document, these Conditions and any other documents referred to in the Contract Award Document. The expression also extends to cover any amendments to this Agreement from time to time;
      2. "**Contract Award Document**" means the contract award documentation issued by Falkirk Council to the Contractor notifying the Contractor of its award of the contract and listing the documentation which, together with these terms and conditions, forms part of and constitutes this Agreement;
      3. "**Contractor**" means the Contractor supplying the Goods and/or Services to Falkirk Council as named in the Contract Award Document; and
      4. "**Falkirk Council**" means a local authority constituted under the Local Government etc. (Scotland) Act 1994 and having its principal offices at Abbotsford House, Davids Loan, Falkirk FK2 7YZ;
   2. **Other definitions.** In these terms and conditions, unless the context otherwise requires:
      1. "**Charges**" means the charges and fees payable as set out in this Agreement;
      2. "**Contractor Party**" means the Contractor and any Sub-Contractor;
      3. "**Contractor Worker**" means the employee(s), workers or any other individual engaged by a Contractor Party to provide the Goods and/or Services to Falkirk Council;
      4. "**Dispute**" means any dispute or difference between the Parties arising from or in connection with this Agreement;
      5. **“Employment Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) or any regulations which replace or amend these;
      6. "**Goods**" means the goods to be supplied by the Contractor to Falkirk Council as specified in this Agreement, and includes any materials, goods or equipment to be provided by the Contractor in the delivery of Services;
      7. "**Information Legislation**" means the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004;
      8. "**Insolvency Event**" means 1) any event which is a step in a court, statutory or regulatory process relating to the insolvency, administration, receivership, winding up, sequestration or bankruptcy of the Contractor, or any analogous process in any jurisdiction 2) the Contractor being unable to pay its debts as they fall due or 3) the Contractor ceasing to trade or threatening so to do;
      9. "**Intellectual Property Rights**" means patents, trademarks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, know‑how, trade or business names and other similar rights or obligations whether registerable or not in any country (including the United Kingdom);
      10. "**Law**" means any statute, directive, other legislation, law or regulation in whatever form, delegated act (under any of the foregoing), rule or other binding restriction, decision or guidance in force from time to time;
      11. "**Falkirk Council Premises**" means any premises of Falkirk Council being a location where Goods are to be delivered or Services are to be provided;
      12. "**Materials**" means all materials in which there are Intellectual Property Rights, including documents, specifications, instructions, drawings, or designs;
      13. "**Services**" means the services to be provided by the Contractor to Falkirk Council as specified in this Agreement;
      14. "**Sub-Contract**" means any contract between the Contractor and any third party in respect of the performance of this Agreement (or any part thereof). The terms “Sub-Contractor” and “Sub-Contracting” will be similarly construed; and
      15. "**Termination Default**" means a default as described in Clauses 11.3 to 11.5.
   3. In these Conditions, unless the context otherwise requires:
      1. a reference to a person includes natural persons, companies, partnerships, bodies corporate and other legal entities;
      2. the singular includes the plural and vice versa;
      3. the meaning of general words is not to be restricted by any particular examples preceding or following those general words;
      4. references to "liabilities" in indemnity clauses includes costs, expenses, damages and losses;
      5. the word "including" means "including without limitation";
      6. a reference to "approval" or "consent" or "agreement" or "notice" requires writing; and
      7. if more than one person is detailed in this Agreement as the Contractor, references in this Agreement to the "Contractor" will be interpreted and construed as each such person on a joint and several basis.
2. **Goods** 
   1. **Ownership of Goods**. Unless Clause 2.2 or 2.3 applies, ownership of the Goods will pass to Falkirk Council when the Goods have been delivered to Falkirk Council in accordance with Clause 2.4. Risk of loss, damage or destruction will pass to Falkirk Council with ownership.
   2. **Ownership of the Goods – pre-payment**. If the Agreement requires payment of Charges for Goods by Falkirk Council before delivery of the Goods, ownership of the Goods will pass to Falkirk Council when payment is made. Risk of loss, damage or destruction will pass to Falkirk Council when the Goods have been delivered to Falkirk Council in accordance with Clause 2.4. Prior to delivery the Goods will be clearly marked by the Contractor as the property of Falkirk Council.
   3. **In stock Goods.** If the Agreement requires Goods in the ownership of the Contractor to be held in stock at Falkirk Council Premises ownership shall pass to Falkirk Council when the Goods are used in the course of its business. Risk of loss, damage or destruction will pass to Falkirk Council when the Goods have been delivered in accordance with Clause 2.4.
   4. **Delivery.** Delivery of the Goods must be made at such times and to such locations as this Agreement specifies. The Contractor must comply with all instructions in relation to delivery set out in this Agreement. The signature or acceptance of a delivery will not constitute evidence of acceptance of the Goods.
   5. **Inspection.** Falkirk Council reserves the right to inspect all Goods on delivery.
   6. **Rejecting Goods.** At any time within 60 days of delivery, Falkirk Council may reject any Goods which do not meet the requirements of this Agreement. After rejection Falkirk Council may choose (without affecting any of its other rights) to have any rejected Goods repaired or replaced by the Contractor, or to obtain a refund. If asked, the Contractor will uplift any rejected Goods without delay, and risk of loss, damage or destruction will pass to the Contractor on uplift. If Clause 2.3 applies the rejection period shall commence from the time the Goods are used in the ordinary course of Falkirk Council's business.
   7. **Warranties.** The Contractor represents and warrants that the Goods shall:
      1. conform as to quality, quantity and description with the particulars stated in this Agreement;
      2. be of sound materials and workmanship;
      3. be capable of any standard of performance specified in this Agreement;
      4. be fit for the purpose for which they are required as stated in this Agreement or otherwise communicated by Falkirk Council; and
      5. comply with all applicable Law.
   8. **Guarantee.** The Goods will be guaranteed by the Contractor for a period of 12 months from the payment of the Goods unless an alternative time period is specified in the Contract Award Documentation. Without affecting any of Falkirk Council's other rights the Contractor must remedy any defect in any of the Goods which occurs during the guarantee period.
   9. **Services only contract.** If no Goods are to be supplied in accordance with this Agreement, clauses 2.1 to 2.8 will not apply.
3. **Services**
   1. **Skill and care.** The Services shall be rendered with all due skill, care and diligence and in accordance with the highest standards accepted within the industry to which the Services relate.
4. **Progress Reports and monitoring**
   1. **Progress Reports**. When asked by Falkirk Council, the Contractor must provide reports showing the progress of the performance of this Agreement, the associated costs and the performance of the Contractor against any key performance indicators which are set out in this Agreement.
   2. **Format and timing**. Falkirk Council may from time to time specify the format of the reports, and the Contractor will use that format. The Contractor must issue reports 2 days in advance of any review meetings scheduled by Falkirk Council.
5. **Payment**
   1. **The Charges.** After completion of this Agreement, Falkirk Council will pay to the Contractor the Charges. If the Contract Award Document includes a different payment schedule, that schedule will apply. The Charges are inclusive of the costs of delivery of any Goods.
   2. **Payment.** Falkirk Council will pay the Contractor within 30 days of the date on which each valid and undisputed invoice is received from the Contractor. If the Contract Award Document includes different payment terms, those terms will apply.
   3. **Disputed invoices.** If there is a Dispute in relation to an invoice, or performance of this Agreement to which the invoice relates, Falkirk Council may withhold payment of the disputed part of the invoice until the Dispute is resolved.
   4. **VAT and invoices.** All Charges are exclusive of Value Added Tax. If any Value Added Tax is payable, the Contractor will show this separately on its invoice.
   5. **Rebate.** If this Agreement includes a rebate payable by the Contractor based on the amount of the Charges, then the Contractor will provide all information requested by Falkirk Council to allow Falkirk Council to calculate the amount of the rebate, and Falkirk Council will issue to the Contractor an invoice for the amount of the rebate due on a quarterly basis. The Contractor shall pay Falkirk Council within 30 days of the date on which each valid and undisputed rebate invoice is received.
6. **Access to Premises**
   1. **Agreeing access.** If a Contractor Party needs access to any Falkirk Council Premises, the dates, times and other arrangements will be agreed between the Parties, each acting reasonably.
   2. **Falkirk Council instructions.** The Contractor will comply with (and procure that all Contractor Workers comply with) all reasonable instructions given by Falkirk Council in relation to the access to and use of Falkirk Council Premises.
7. **Employees**
   1. **Key Employees.** If the Agreement identifies roles and responsibilities for particular personnel of a Contractor Party, the Contractor will use those personnel as so identified, unless Falkirk Council agrees to a change.
   2. **Experienced employees.** The Contractor will use suitably experienced and qualified personnel for carrying out this Agreement.
8. **Indemnity**
   1. **Contractor's indemnity.** The Contractor will indemnify Falkirk Council against any action, claim, demand, costs, charges or liabilities Falkirk Council may incur as a result of a Contractor Party's negligence, or a breach of this Agreement by the Contractor.
9. **Insurance**
   1. **Contractor to insure.** On the request of Falkirk Council, the Contractor will exhibit satisfactory evidence of the insurance policies required by Law or required specifically by this Agreement, together with satisfactory evidence of payment of the premia.
   2. **Goods.** The Contractor shall maintain insurance, to the level of full replacement value, against the loss, damage or destruction of the Goods which occurs whilst the Goods are under its control, including in circumstances where Goods are returned to the Contractor by Falkirk Council.
10. **Disputes**
    1. **Notice of dispute.** Any Dispute shall be notified, by the party raising it, to the other party.
    2. **Escalation.** If a Dispute is not resolved within 14 days by those with day to day responsibility for this Agreement, either party may require by a further notice that the dispute is escalated to the immediate line manager of those with such responsibility of each of Falkirk Council and the Contractor..
    3. **Resolution.** If a Dispute is resolved after escalation, the agreed resolution shall be written down and signed by both parties.
    4. **Court proceedings.** Court proceedings relating to any Dispute (other than proceedings seeking interim interdict or interim relief) shall not be commenced by either party unless the Dispute has been escalated in accordance with Clause 10.2 and the Dispute has not been resolved and the resolution recorded within 30 days of escalation.
11. **Default**
    1. **Notification.** If the Contractor is in default against any obligation under this Agreement the Contractor will notify Falkirk Council in writing of such breach.
    2. **Opportunity to remedy.** Falkirk Council may at its option give the Contractor the opportunity to remedy any default which is capable of remedy.
    3. **Remedy.** If the Contractor is given the opportunity by notice to remedy the default, the Contractor will remedy the default as soon as possible after the notice. If the Contractor has failed to remedy the default within 30 days of the notice there will be a Termination Default, and Clause 12.1 will apply.
    4. **Force Majeure.** If an event beyond the reasonable control of the Contractor and/or Falkirk Council means that the Contractor will be unable to perform or substantially perform its obligations under this Agreement for a period of 30 days or more 1) the affected party shall notify the other, 2) there will be a Termination Default and Clause 12.1 will apply, and 3) the affected Party shall be relieved from the performance of this Agreement to the extent prevented by the event, provided all reasonable steps are taken to mitigate its impact.
    5. **Termination Default.** If a default is not capable of remedy, or the default is material and Falkirk Council elects not to give the opportunity for remedy then there will be a Termination Default and Clause 12.1 will apply.
12. **Termination**
    1. **Termination for default.** Falkirk Council may at any time by notice terminate this Agreement if:
       1. there is an Insolvency Event; or
       2. there is a Termination Default.
13. **Consequences of Termination**
    1. **Rights at termination.** Termination of this Agreement will not affect any rights existing at termination.
    2. **Continuing Clauses.** Termination of this Agreement will not affect the continued operation of Clauses 8.1, 13, 14, 15, 18, 19, and 23 or any other of the provisions of this Agreement which, having regard to their terms, are intended to apply on or to survive termination or expiry.
    3. **Handover.** For a reasonable period after termination of this Agreement for whatever reason (and for a reasonable period prior to termination, where this date is known in advance) the Contractor will provide Falkirk Council with assistance and information so as to facilitate the efficient handover or transition of the responsibilities and activities of the Contractor to Falkirk Council or to a subsequent supplier.
14. **Confidentiality, FOI and Personal Data**
    1. **Confidential information.** All information of a confidential nature obtained by the Contractor from Falkirk Council will be treated by the Contractor in confidence. The Contractor will not use that information for other purposes or disclose it other than to the extent required to perform this Agreement or to comply with Law.
    2. **FOI.** The Contractor acknowledges that Falkirk Council is subject to the requirements of the Information Legislation. The Contractor will provide such assistance and co-operation as Falkirk Council may reasonably require to enable it to comply with its information disclosure obligations under the Information Legislation.
    3. **Publicity.** The Contractor will not disclose that Falkirk Council is its customer or client to any third party or use Falkirk Council's name and/or brand in any tendering exercise, promotion or marketing, unless:
       1. it is necessary for the Contractor to properly discharge this Agreement or to comply with Law; or
       2. the Contractor has obtained the prior consent of Falkirk Council.
    4. **Data Protection.** Falkirk Council and the Contractor shall each comply with their obligations in relation to the processing of personal data in accordance with the Law relating to data protection including the 2016 General Data Protection Regulation.
15. **Assignation and Sub-contracting**
    1. **Transfers.** The Contractor will not assign, Sub-Contract or otherwise transfer its interest in this Agreement (or any part of it) without the previous consent of Falkirk Council (which will not be unreasonably withheld or delayed). Falkirk Council may assign, Sub-Contract or otherwise transfer its interest in this Agreement (or any part of it).
    2. **Responsibility for sub-contractors.** The Contractor will remain fully liable for the actions and defaults of all of its Sub-Contractors.
16. **Bribery**
    1. The Contractor must not do anything that gives or offers any kind of inducement or reward to any of Falkirk Council's employees or contractors in relation to this Agreement.
17. **Falkirk Council's Property**
    1. Where Falkirk Council provides to the Contractor vehicles, equipment or materials ("**Council Property**") free of charge for this Agreement such materials will remain the property of Falkirk Council. The Contractor will maintain all such Council Property in good order and condition. The Contractor will use such Council Property solely in connection with this Agreement. The Contractor will return the Council Property to Falkirk Council on termination of this Agreement.
18. **Intellectual Property Rights**
    1. **Contractor's indemnity**. If (a) the Contractor infringes the Intellectual Property Rights of any third party in relation to this Agreement, or (b) Falkirk Council uses Materials provided to it by the Contractor for purposes contemplated or envisaged by this Agreement and in so doing infringes the Intellectual Property Rights of any third party, the Contractor will indemnify Falkirk Council against all liabilities Falkirk Council may incur as a result of such infringement.
    2. **Falkirk Council documents.** All Intellectual Property Rights in any Materials which are made available to the Contractor by Falkirk Council will not be owned by the Contractor and will be owned by Falkirk Council (or a third party owner, as the case may be).
    3. **Transfer of IPR.** All Intellectual Property Rights in any Materials prepared by or for the Contractor as the Contractor performs this Agreement will be owned by Falkirk Council. If asked, the Contractor will sign and deliver an assignation of such Intellectual Property Rights to confirm ownership by Falkirk Council.
    4. **Licence of IPR** – pre-existing Materials. If there are Intellectual Property Rights in any Materials which are provided to Falkirk Council, but which have not been prepared by or for the Contractor as the Contractor performs this Agreement, Falkirk Council will have all necessary and appropriate licence rights in relation to such Intellectual Property Rights to allow it to use the Materials for all purposes contemplated or envisaged by this Agreement. The licence will be non-exclusive and royalty free. If asked, the Contractor will sign and deliver a licence of such Intellectual Property Rights to confirm the licence rights held by Falkirk Council.
19. **Audit rights**

The Contractor will keep and maintain (to Falkirk Council's satisfaction) records of all expenditure which is reimbursable by Falkirk Council until two years after this Agreement terminates. The Contractor will also keep such records of the hours worked and costs incurred in connection with any of their employees paid for by Falkirk Council on a time charge basis and will grant access to such records upon request.

1. **General**
   1. If any provision of this Agreement is found by any court or other authority of competent jurisdiction to be invalid, illegal, ineffective or unenforceable or is to be suspended, reduced, set aside or amended or the subject of an equivalent order, that provision will, to the extent required, be deemed not to form part of this Agreement and the parties will each use their reasonable endeavours in good faith to modify this Agreement so that the intent of this Agreement can be legally carried out. Falkirk Council will have no liability to the Contractor for any losses incurred as a result of a court or other authority's decision that this Agreement or any provision or part of any provision of this Agreement is invalid, illegal, ineffective or unenforceable or is to be suspended, reduced, set aside or amended or the subject of an equivalent order.
   2. Any rights and remedies provided under this Agreement are in addition to, and not instead of, any other rights or remedies provided under this Agreement or provided by Law.
2. **Notices**
   1. **Sending notices.** Notices must be sent by post, by email or delivered by hand to the relevant address detailed in the Contract Award Document (or any substitute address notified). If posting or delivery by hand is proved, a notice will be deemed to be effectively given on the day when in the ordinary course of the means of sending it would first be received by the addressee in normal business hours.
3. **This Agreement**
   1. **Entire agreement.** This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. Each party acknowledges and agrees that it has not entered into this Agreement on the basis of any representation or warranty made by the other, other than a representation or warranty incorporated in this Agreement.
   2. **Written variations only.** This Agreement will not be varied unless a variation is agreed in writing by a duly authorised representative of each of the parties.
   3. **No automatic waiver.** Any failure to enforce or exercise a provision of or right under this Agreement will not constitute a waiver of that provision or right.
4. **Relationship**
   1. **No agency.** This Agreement will not have the effect of making any Contractor Party the agent of Falkirk Council.
   2. **No employment.** Nothing in this Agreement will have the effect of making any Contractor Worker an employee of Falkirk Council.
   3. **TUPE.** On the cessation or partial cessation of the provision of the Services or any part of the Services by the Contractor on the termination, expiry or variation of this Agreement, the Parties do not anticipate that the Employment Regulations shall apply so as to transfer the contracts of employment of any Contractor Worker to Falkirk Council or any new supplier. Notwithstanding that anticipation, the Contractor will comply with its obligations under the Employment Regulations and will provide such information in relation to Contractor Workers as Falkirk Council may reasonably require.
   4. In the period of three months prior to the cessation or partial cessation of the provision of the Services or any part of the Services, the Contractor will not make any changes to the nature or composition of the teams comprising the Contractor Workers without the prior consent of Falkirk Council not to be unreasonably withheld.
   5. If the contract of employment of any Contractor Worker transfers to Falkirk Council or any new supplier or a Contractor Worker asserts that it has so transferred under the Employment Regulations, Falkirk Council and / or the new supplier may terminate that contract of employment.
   6. The Contractor will, on demand by Falkirk Council, indemnify Falkirk Council and any new supplier against (or, at the option of Falkirk Council, indemnify Falkirk Council on its own behalf and/or on behalf of any new supplier) and as a separate obligation undertakes to pay to Falkirk Council the amount of, all losses, fines, penalties, awards, liabilities, costs, damages and expenses (including reasonable legal expenses on an indemnity basis) which Falkirk Council or any new supplier may incur (directly or indirectly):
      1. in connection with the employment or termination of employment of any Contractor Worker pursuant to Clause 23.4; and
      2. as a result of any failure by the Contractor to comply with the Employment Regulations in respect of any Contractor Worker.
5. **Law and Jurisdiction**
   1. This Agreement will be governed by and construed in accordance with the law of Scotland and the Scottish Courts will have authority to settle any dispute. The Contractor may only raise an action against Falkirk Council in the Scottish courts.