

# North Ayrshire Council Framework Agreement Terms and Conditions

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## 1. Definitions

In the Framework Agreement, unless the context otherwise requires, the following terms have the meanings given to them below:

**“Award Procedures”** means the procedures for entering into Call-off Contracts set out in the ITT.

**“Call-off Contract”** means any formal contract for the supply of goods and/or services the Framework Purchaser and the Framework Supplier entered into, in accordance with the Award Procedures and based on the North Ayrshire Council Terms and Conditions for The Purchase of Goods, Purchase of Services, Purchase of ICT Services, Purchase of Goods and related services or Consultancy Services.

**“Clause”** means a specific point or provision in these Terms and Conditions.

**“Commencement Date”** Means the commencement date as specified in the contract award letter.

**“Commercial Envelope”** means the pricing schedule section within the Public Contracts Scotland e-tendering portal.

**“Contract and Supplier Management Arrangements”** means the arrangements for the management of the relationship between the Purchaser and the Supplier, including arrangements for monitoring of the Supplier’s compliance with the Specification, the Service Levels, the Award Procedures and the terms of this Framework Agreement, set out in the ITT.

**“Data Breach”** means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier or any sub-contractor under or in connection with the Framework Agreement, and/or actual or potential loss and/or destruction and/or corruption of Personal Data in breach of the Framework, including but not limited to any Personal Data Breach.

**“Data Controller”** has the meaning given in the Data Protection Laws.

**“Data Processor”** has the meaning given in the Data Protection Laws.

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

including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the UK GDPR.

**“Data Subject”** has the meaning given in the Data Protection Laws.

**“Default”** means any failing by a Party to perform its obligations under the Contract or meet the conditions of the Contract (including material breach) or any negligent act, omission or statement of a Party in connection with or in relation to the Contract.

**“Force Majeure”** means any cause hindering the performance by a Party of its obligations arising directly from acts, events, or omissions which is beyond the reasonable control of the Party concerned and which is not attributable to the wilful act, neglect, or failure to take reasonable preventative action by that Party, its agents or employees, including, but not limited to, industrial action, fire, flood, violent storm, pestilence, explosion, malicious damage, armed conflict, acts of terrorism, epidemic, pandemic, war or civil unrest, nuclear, biological or chemical warfare, or any other disaster, natural or man-made.

**“Framework Agreement”** or **“Agreement”** means this framework agreement between the Purchaser and the Supplier detailed in the ITT.

**“Framework Purchasers”** means the Purchaser and the collaborative partners referred to in the ITT.

**“Framework Supplier”** means the supplier’s referred to in the framework award letters.

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

**“Goods”** means any such goods as are to be supplied to the Purchaser by the Supplier (or by any of the Supplier’s sub-contractors) pursuant to or in connection with the Call-off Contract.

**“Information Commissioner”** means the Commissioner as set out in Part 5 of the Data Protection Act 2018.

**“Intellectual Property Rights”** means all copyright, patent, trademark, design right, database right and any other right in the nature of intellectual property whether or not registered, in any materials or works in whatever form (including but not limited to any materials stored in or made available by means of an information technology system

and the computer software relating thereto) which are created, produced or developed as part of the Services by or on behalf of the Supplier.

**“ITT”** means the Purchaser’s invitation to tender.

**“Judicial Order”** means an ineffectiveness order or an order shortening the duration of the contract made in relation to the Contract under Chapter 6 of the Public Contracts (Scotland) Regulations 2015.

**“Key Performance Indicators”** means the performance measures detailed within the Call-off Contract which the Supplier must adhere to.

**“Law”** means:

- (a) any applicable statute or proclamation or any delegate or subordinate legislation.
  - (b) any enforceable right forming part of retained EU law within the meaning of the European Union (Withdrawal) Act 2018.
  - (c) any applicable guidance, direction, determination, or regulations with which the Purchaser and/or the Service Provider is bound to comply.
  - (d) any applicable judgment of a relevant court of law which is a binding precedent in Scotland; and
  - (e) and requirements of any regulatory body.
- in each case in force during the period of the Framework Agreement in Scotland.

**“Party”** means the Supplier and Purchaser respectively and does not include any other party who may have the benefit of this Framework Agreement.

**“Parties”** means the Supplier and Purchaser collectively and does not include any other party who may have the benefit of this Framework Agreement

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

**“PCST”** means the Public Contracts Scotland – Tender e-tendering portal.

**“Premises”** means the location where the Services are to be performed, or Goods are to be delivered as specified in the Specification or Quick Quote Project Brief.

**“Pricing Schedule”** means the details of the pricing of the Goods and/or Services as at the Commencement Date set out in the Suppliers commercial response, submitted via the PCST Commercial Envelope.

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

**“Procurement Card”** means a type of company charge card used for smaller purchases to achieve greater cost efficiency, control and convenience. Procurement cards are also known as Purchasing Cards, P-Cards or PCards.

**“Purchase Order”** means the document setting out the Purchaser's requirements for the Call-off Contract.

**“Purchaser”** means North Ayrshire Council a local authority constituted in terms of the Local Government etc. (Scotland) Act 1994 and having its principal offices at Cunninghame House, Irvine, Scotland, KA12 8EE and their statutory successors whomsoever.

**“Purchaser Protected Information”** means any specific protected information detailed in the ITT.

**“Services”** means the services to be provided as specified in the Purchase Order and shall, where the context so admits, include any materials, articles and goods to be supplied, assigned thereunder.

**“Service Levels”** means the particular levels of service that the Supplier has undertaken to meet and identified as service levels in the Specification.

**“SPD”** means the Single Procurement Document completed by the Supplier and sent to the Purchaser.

**“Specification”** means the document forming part of the procurement process which sets out the Purchaser's requirements and objectives of each stage of the delivery of the Goods and/or Services.

**“Supervisory Authority”** has the meaning given in the Data Protection Laws.

**“Supplier”** means the person, firm or company to whom the Framework Agreement is issued.

**“Supplier Representative”** or “Supplier Representatives” or “Supplier's Representatives” means all persons engaged by the Supplier in the performance of its obligations under the Framework Agreement including but not limited to its Staff, its agents, suppliers and carriers; and any sub-contractors of the Supplier (whether approved under clause 21 (Assignment and Sub-Contracting) or otherwise).

**“Staff”** means any persons employed by the Supplier, and any persons employed by a third party but working for and under the control of the Supplier, who are or may be at any time concerned with the Goods and/or Services or any part of them.

**“Tender”** means the tender submitted by the Supplier to the Purchaser in response to the ITT.

**“TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

**“UK GDPR”** means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data as it forms part of the law of the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 and 2020.

**“Working Day”** means a day other than a Saturday, Sunday or bank holiday in Scotland.

**“Working Hour”** means an hour between 0900 hours and 1700 hours on a Working Day.

## **2. Interpretation**

2.1 The interpretation and construction of the Framework Agreement is subject to the following provisions:

2.1.1 words importing the singular meaning include, where the context so admits, the plural and vice versa;

2.1.2 words importing the masculine include the feminine and neuter;

2.1.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;

2.1.4 references to any statute, enactment, order, regulation or other similar instrument are construed as a reference to the instrument as amended by any subsequent instrument or re-enacted;

2.1.5 references to any person include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;

2.1.6 reference to “expiry or termination” of the Framework Agreement includes the making of a Judicial Order;

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

2.1.8 headings are included in the Framework Agreement for ease of reference only and do not affect the interpretation or construction of the Framework Agreement.

### **3. Parent Company Guarantee**

It shall be a condition of this Framework Agreement, that if required by the Purchaser, the Supplier shall deliver a validly executed parent company guarantee in the form set out in the ITT. The rights and obligations of the Parties shall have no force or effect unless the parent company guarantee has been properly executed and delivered to the Purchaser. The parties acknowledge that if this condition has not been fulfilled any performance of this Framework Agreement by the Supplier shall be at the risk of the Supplier and the Purchaser shall not be liable for and the Supplier irrevocably waives any entitlement to payment of any fees, expenses or other payments in relation to such performance. Where the Supplier has failed to fulfil this condition prior to and no later than the Commencement Date of the Framework Agreement the Purchaser shall have the right to terminate the Framework Agreement by notice in writing to the Supplier.

### **4. Nature of this Agreement**

4.1 This Agreement is a Framework Agreement within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015. Call-off Contracts are public contracts within the meaning of that regulation.

4.2 This Framework Agreement is either a single-supplier or multi-supplier agreement as detailed in the framework award letter and the suppliers that are party to it are the Framework Suppliers. No other suppliers are party to the Framework Agreement.

4.3 This Framework Agreement is either a single-user or multi-user framework agreement as detailed in the ITT and the purchasers that are party to it are the Framework Purchasers. No other Purchasers are party to the Framework Agreement.

4.4 Save to the extent specifically provided for in this Agreement, the Supplier acknowledges that it is not the exclusive supplier of the Goods and/or Services to the Framework Purchasers and as such no guarantee of work or volume of work has been granted by the Framework Purchasers.

4.5 The Supplier acknowledges that the Framework Purchasers are separate legal persons and as such the Purchaser has no liability in relation to the performance or non-performance of other Framework Purchaser obligations under this Framework Agreement or any Call-off Contracts.



## **5. Period**

5.1 The period of this Framework Agreement is detailed in the ITT, unless it is terminated earlier or extended under Clause 5.2.

5.2 The Purchaser may, by giving notice to the Supplier, extend the period of the Framework Agreement to a date falling no later than four years from the Commencement Date, within the optional extensions detailed in the ITT. Subject to that constraint, the Purchaser may extend the period of the Framework Agreement on more than one occasion.

5.3 The period of Call-off Contracts is addressed in the ITT. The period of a Call-off Contracts may continue notwithstanding that the Framework Agreement has expired or terminated.

## **6. Specification and Service Levels**

The Specification sets out the Goods and/or Services that the Supplier has undertaken to provide and are included in the ITT. The Specification includes Service Levels setting out particular levels of service that the Supplier has undertaken to meet.

## **7. Price**

7.1 The Pricing Schedule sets out details of the pricing of the Goods and/or Services as at the Commencement Date.

7.2 The prices in the Pricing Schedule are either not to be increased or may be varied for the period of the Framework Agreement in accordance with the arrangements set out in the PCST Commercial Envelope and the ITT.

7.2 Accordingly, the Supplier may not unilaterally increase the prices in the Pricing Schedule. But nothing in this Framework Agreement prevents the Supplier from improving on the prices in the Pricing Schedule for the purposes of a Call-off Contract.

## **8. Award Procedure**

8.1 The Award Procedures may be invoked by the any Framework Purchasers and Call-off Contracts may be entered into at any time during the period of the Framework Agreement.

8.2 But the Award Procedures may not be invoked, and Call-off Contracts may not be entered into with the Supplier if:

8.2.1 The period of the Framework Agreement has expired;

8.2.2 The Supplier's Framework Agreement has been terminated; or

8.2.3 The Supplier's appointment to provide the Goods and/or Services detailed in the Specification to the Framework Purchasers has been suspended.

8.3 The Framework Purchasers and Supplier must comply with the Award Procedures and must establish each Call-off Contract without amendment to the applicable Call-off Contract Terms and Condition for Goods, Services, Goods and Related Services, or Consultancy Services (other than works consultancies).

8.4 The Supplier must maintain the capacity to enter into and perform Call-off Contracts throughout the period of the Framework Agreement.

### **Contract and Supplier Management Arrangements**

9.1 The Contract and Supplier Management Arrangements set out the arrangements for the management of the relationship between the Purchaser and the Supplier, including arrangements for monitoring of the Supplier's compliance with the Specification, the Service Levels, the Award Procedures and the terms of this Framework Agreement.

9.2 The Purchaser may by notice to the Supplier suspend the Supplier's appointment to provide Services to the Framework Purchasers or a notified period of time:

9.2.1 if the Purchaser becomes entitled to terminate this Framework Agreement under clause 31 (Termination);

Or

9.2.2 in any other circumstance provided for in the Contract and Supplier Management Arrangements.

9.3 Suspension under clause 9.2 shall terminate upon cessation of all of any circumstances referred to in subclauses 9.2.1 and 9.2.2.

9.4 The Supplier must continue to perform existing Call-off Contracts during any period of suspension under clause 9.2.

### **10. Supplier Status**

At all times during the term of this Framework Agreement the Supplier is an independent Supplier and nothing in this Framework Agreement establishes a contract of employment, a relationship of agency or partnership or a joint venture between the Parties. Accordingly, neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Framework Agreement.

## **11. Notices**

11.1 Any notice to be given from one Party to the other under the Framework Agreement shall be valid only if it is made in writing.

11.2 Further any such notice which is to be given by either Party to the other, except for the purpose of court proceedings, shall be given by email or 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 notices shall be addressed to the Supplier or to the Purchaser in the following manner:

11.2.1 For the Supplier – to the address shown on the Purchase Order, or to such other address as the Party may by notice to the other have substituted therefor in accordance with this Clause;

11.2.2 For the Purchaser – addressed to Senior Manager (Corporate Procurement), 1<sup>st</sup> Floor West, Cunninghame House, Irvine KA12 8EE or via email to [procurement@north-ayrshire.gov.uk](mailto:procurement@north-ayrshire.gov.uk), or to such other address as the Party may by notice to the other have substituted therefor in accordance with this Clause.

11.3 Where a notice is delivered by hand, it shall be deemed to have been delivered when it is left and signed for at the relevant Party's address set out in Clause 11.2.

11.4 Where a notice is delivered by a signed for special delivery postal service, provided that it is not returned as undelivered, it shall be deemed to have been given at the earlier of: two (2) Working Days after the day on which the letter was posted, or acknowledgement of receipt of such a letter by the Supplier or the Purchaser.

11.5 Where a notice is delivered by email it shall be deemed effective on the day of transmission, unless such transmission is not done on a day in which is not a Working Day or occurs after 1700 hours in which case it shall be deemed effective on the next Working Day.

11.6 The Supplier shall advise the Purchaser, as soon as practicable and in any event no later than seven (7) days after any change, of a change of address for service by sending a notice in accordance with this Clause.

11.7 The Purchaser may change its address for service by sending a notice in accordance with this Clause.

11.8 The Purchaser shall not be responsible for any failure to intimate or delay in intimation arising out of or in consequence of the Supplier's omitting to advise the Purchaser of a change of the Supplier's address under this Clause.

## **12. Recovery of Sums Due**

Wherever under this Framework Agreement any sum of money is recoverable from or payable by the Supplier to the Purchaser, the Purchaser may deduct that sum from any sum due, or which at any later time may become due, to the Supplier under this Framework Agreement or under any other agreement between the Supplier and the Purchaser.

## **13. Confidentiality**

13.1 The Supplier shall keep secret and not disclose and shall procure that the Supplier's Representatives keep secret and do not disclose any information of a confidential nature or business data obtained by the Supplier by reason of this Framework except information which is in the public domain otherwise than by reason of a breach of this Clause.

13.2 All information related to the Framework will be treated as commercial in confidence by the parties except that the Supplier or Purchaser or both may disclose any information as required by law or judicial order to be disclosed.

13.3 The Supplier shall at all times comply with the Purchaser's IT and Cyber Security Policy and it is the Supplier's responsibility to ensure that the Supplier and the Supplier's Representatives are familiar with and comply with the IT and Cyber Security Policy as well as with any of the Purchaser's related security standards, guidelines and procedures in relation to the IT and Cyber Security Policy. The IT and Cyber Security Policy can be obtained on request by contacting the Purchaser's ICT Security Team by email at [cybersecurityteam@north-ayrshire.gov.uk](mailto:cybersecurityteam@north-ayrshire.gov.uk).

13.4 The provisions of this Clause 13 shall apply during the continuance of this Framework and after its termination howsoever arising.

## **14. Data Protection**

14.1 The Data Schedule will define the data relationship and dependent on this either paragraph 14.2 or 14.3 shall be applicable. Where there are aspects of duality within the relationship then both paragraphs 14.2 and 14.3 shall apply.

14.2 The Supplier acknowledges that Personal Data described in the scope of the Schedule (Data Protection) will be processed in connection with the Services under this Framework. For the purposes of any such Processing, Parties agree that the Supplier acts as the Data Processor and the Purchaser acts as the Data Controller.

14.3 Notwithstanding Clause 14.2, the parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Laws in respect of the Personal Data described in Schedule 1 as being under Joint Control. In respect of Personal Data under Joint Control, Clauses 14.1 to 14.16 (under exception of 14.3) will not

apply and the Parties agree to put in place a Data Sharing and Processing Contract (Controller to Controller).

14.4 Both Parties agree to negotiate in good faith any such amendments to this Framework that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this Clause 14 are without prejudice to any obligations and duties imposed directly on the Supplier under Data Protection Laws and the Supplier hereby agrees to comply with those obligations and duties.

14.5 The Supplier will, in conjunction with the Purchaser and in its own right and in respect of the Goods and/or Services, make all necessary preparations to ensure it will be compliant with Data Protection Laws.

14.6 The Supplier will provide the Purchaser with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.

14.7 The Supplier must:

14.7.1 agree and comply with the terms of the data processing provisions set out in the Schedule (Data Protection);

14.7.2 process Personal Data only as necessary in accordance with obligations under the Framework and any written instructions given by the Purchaser (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the United Kingdom unless required to do so by any legal or regulatory requirement to which the Supplier is subject; in which case the Supplier must inform the Purchaser of that legal or regulatory requirement (unless prohibited from doing so by law) before Processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Supplier's obligations under this Framework or as is required by the Law;

14.7.3 subject to Clause 14.7.2 only Process or otherwise transfer any Personal Data in or to any country outside the United Kingdom in accordance with the Data Protection Laws and with the Purchaser's prior written consent and subject to a security risk assessment being undertaken;

14.7.4 take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:

(a) are aware of and comply with the Supplier's duties under this Clause;

- (b) are subject to appropriate confidentiality undertakings with the Supplier or the relevant sub-contractor;
- (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Purchaser or as otherwise permitted by this Framework; and
- (d) have undergone adequate training in the use, care, protection and handling of Personal Data.

14.7.5 implement appropriate technical and organisational measures including those set out in the Schedule (Data Protection) and in accordance with Article 32 of the UK GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected and complete the security risk assessment.

14.8 The Supplier shall not engage a sub-contractor to carry out Processing in connection with the Goods and/or Services without prior specific or general written authorisation from the Purchaser. In the case of general written authorisation, the Supplier must inform the Purchaser of any intended changes concerning the addition or replacement of any other sub-contractor and give the Purchaser an opportunity to object to such changes.

14.9 If the Supplier engages a sub-contractor for carrying out Processing activities on behalf of the Purchaser, the Supplier must ensure that same data protection obligations as set out in this Framework are imposed on the sub-contractor by way of to implement appropriate technical and organisational measures. The Supplier shall remain fully liable to the Purchaser for the performance of the sub-contractor's performance of the obligations.

14.10 The Supplier must provide to the Purchaser reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the UK GDPR, including any subject access request and/or responding to any enquiry made, or investigation or assessment of processing initiated by the Information Commissioner in respect of the Personal Data as soon as is possible but in any event within three (3) business days of receipt of the request or any other period as agreed in writing with the Data Controller from time to time.

14.11 Taking into account the nature of the Processing and the information available, the Supplier must assist the Purchaser in complying with the Purchaser's obligations concerning the security of Processing, reporting requirements for Data Breaches, data

protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the UK GDPR. These obligations include:

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

14.12 At the end of the provision of Goods and/or Services relating to Processing the Supplier must, on written instruction of the Purchaser, delete or return to the Purchaser all Personal Data and delete existing copies unless storage of the Personal Data is required by law.

14.13 The Supplier must:

- (a) provide such information as is necessary to enable the Purchaser to satisfy itself of the Supplier's compliance with this Clause 14;
- (b) allow the Purchaser, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Clause 14 and contribute as is reasonable to those audits and inspections;
- (c) inform the Purchaser if in its opinion an instruction from the Purchaser infringes any obligation under the Data Protection Laws.

14.14 Parties acknowledge that the inspecting Party will use reasonable endeavours to carry out any audit or inspection under Clause 14.13 (b) with minimum disruption to the Supplier's day to day business.

14.15 The Supplier must maintain written records including in electronic form, of all Processing activities carried out in performance of delivering Goods and /or Services or otherwise on behalf of the Purchaser containing the information set out in Article 30(2) of the UK GDPR.

14.16 If requested, the Supplier must make such records referred to in Clause 14.15 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.

## **15. Public Access to Information**

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

## **16. Audit**

16.1 The Supplier shall keep and maintain until the date falling 7 years after the date of expiry of the Framework Agreement or any period of extension, or as long a period as may be agreed between the parties, full and accurate records of the Framework Agreement including the orders placed, Goods and/ or Services supplied under it, all expenditure reimbursed by the Purchaser, and all payments made by the Purchaser. The Supplier shall on request afford the Purchaser such access to those records as may be requested by the Purchaser in connection with the Framework Agreement.

16.2 The provisions of this Clause 16 shall apply during the continuance of this Framework Agreement and after its termination howsoever arising.

## **17. Advertising**

17.1 The Supplier shall not use the North Ayrshire Council logo without the prior written consent of the Purchaser.

17.2 The Supplier shall not disclose any details relating to the Framework Agreement performance and operations with the Purchaser to any other party without the prior written consent of the Purchaser.

17.3 The Supplier shall not communicate in any form with the media, or make any publication or announcement, on any matter concerning the operation, involvement in or performance of the Framework Agreement, without the prior written consent of the Purchaser.



## **18. Suppliers Personnel**

18.1 The Supplier shall provide full particulars as required by the Purchaser of all Supplier Representatives, including but not limited to, a list of names and addresses of Supplier Representatives, specifying the capacities in which they are so concerned with the Goods and/or Services provided and the performance of the Framework Agreement. The Supplier shall take all reasonable steps to avoid changes of Supplier Representatives performing the Framework Agreement and shall provide the Purchaser with one month's written notice and full particulars of any proposed additional or replacement Supplier Representatives.

18.2 At any time, the Purchaser may give notice to the Supplier that any Supplier Representatives are not to become or be involved further with the performance of the Framework Agreement and may require the Supplier to replace any Supplier Representatives removed under this Clause with another suitably qualified person. The decision of the Purchaser regarding the Supplier Representatives shall be final and conclusive. The Supplier shall act immediately on receipt of such notice to comply with the notice, including but not limited to, taking all necessary steps to avoid unauthorised person(s) from gaining access to the Premises and the Purchaser's premises.

## **19. Transfer of Undertakings (Protection of Employment)**

19.1 The Supplier recognises that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") may apply in respect of the Framework Agreement, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall (a) transfer to the Supplier on the commencement of the Framework Agreement; (b) transfer to another Supplier on the expiry of the Framework Agreement.

19.2 During the period of six months preceding the expiry of the Framework Agreement or after the Purchaser has given notice to terminate the Framework Agreement or the Supplier stops trading, and within 20 Working Days of being so requested by the Purchaser, the Supplier shall fully and accurately disclose to the Purchaser or to any person nominated by the Purchaser information relating to employees engaged in providing the Services in relation to the Framework Agreement in particular, but not necessarily restricted to, the following:

- (1) the total number of personnel whose employment with the Supplier is liable to be terminated at the expiry of this Framework Agreement but for any operation of law; and
- (2) for each person, age and gender, details of their salary, date of commencement of continuous employment and pay settlements covering that person which relate

to future dates, but which have already been agreed and their redundancy entitlements (the names of individual members of Staff do not have to be given); and

- (3) information about the other terms and conditions on which the affected Staff are employed, or about where that information can be found; and
- (4) details of pensions entitlements, if any.

19.3 The Supplier shall permit the Purchaser to use the information for the purposes of TUPE and of re-tendering, which shall include such disclosure to potential Suppliers as the Purchaser considers appropriate in connection with any re-tendering. The Supplier will co-operate with the re-tendering of the Framework Agreement by allowing the transferee to communicate with and meet the affected employees and/or their representatives.

19.4 The Supplier agrees to indemnify the Purchaser fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision or disclosure of information permitted under this Clause.

19.5 In the event that the information provided by the Supplier in accordance with this Clause becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Purchaser of the inaccuracies and provide the amended information. The Supplier shall be liable for any increase in costs the Purchaser may incur as a result of the inaccurate or late production of data.

19.6 The provisions of this Clause 19 shall apply during the continuance of this Framework Agreement and after its termination howsoever arising.

## **20. Intellectual Property Rights**

20.1 All Intellectual Property Rights in any material including but not limited to reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs which are created or developed by the Supplier on behalf of the Purchaser for use, or intended use, in relation to the performance by the Supplier of its obligations under the Framework Agreement are hereby assigned to and shall vest in the Purchaser absolutely.

20.2 Any material, including but not limited to reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs, furnished to or made available to the Supplier by or as directed by the Purchaser shall remain the property of the Purchaser.

20.3 Except as may expressly be provided for in the Framework Agreement, neither Party acquires any interest in or license to use the other Party's Intellectual Property Rights owned or developed prior to or independently of the Framework Agreement.

20.4 The Supplier must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under the Framework Agreement. The Supplier shall indemnify the Purchaser against all actions, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Clause 20.4.

20.5 The Supplier shall, at the request of the Purchaser, provide the Purchaser with a complete and up-to-date copy of all electronically stored data and all other information necessary to ensure that the Purchaser can continue to use the electronically stored data so provided by the Supplier; all to the reasonable satisfaction of the Purchaser.

20.6 Electronically stored data shall mean data however stored on a computer storage medium, and shall include data stored in conventional files, databases and computer aided design files, and which contain relevant design information. The Supplier shall store all data on a suitable medium in either its native format or in a neutral file format to suit the Purchasers requirements.

20.7 The Purchaser reserves the right to verify and validate any information contained within the electronically stored data within one year from completion of the Services. The Supplier shall remedy at their own expense any defects or inadequacies discovered during the said one year and notified by the Purchaser to the Supplier and such defects or inadequacies shall be remedied within 14 Working Days of receipt of such notification.

20.8 The Supplier shall not have the right to use any reports, or other materials referred to in Clause 20.1 without the prior written consent of the Purchaser and then only upon such terms as may be imposed in connection therewith, except for information which is in the public domain.

20.9 The provisions of this Clause shall apply during the continuance of this Framework Agreement and after its termination howsoever arising.

## **21. Assignment and Sub-Contracting**

21.1 The Supplier shall not assign or sub-contract any portion of the Framework Agreement without the prior written consent of the Purchaser. Sub-contracting any part of the Framework Agreement shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Framework Agreement or these Terms and Conditions.

21.2 Where the Purchaser has consented to the placing of any Sub-Contract(s), the Purchaser reserves the right to obtain and keep copies of any Sub-Contract(s) from the Supplier, and the Supplier shall send copies of any Sub-Contract(s) to the Purchaser immediately at the Purchasers request.

21.3 Where the Purchaser has consented to the placing of any Sub-Contract, and the Supplier enters into a Sub-Contract, the Supplier must ensure that provisions are included which:

21.3.1 requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Purchaser has made payment to the Supplier in respect of the Goods and/or Services, or any part of the Goods and/or Services, and the sub-contractor's invoice relates to such Goods and/or Services then, to that extent, the invoice must be treated as valid and, provided the Supplier is not exercising a right of retention or set-off in respect of a breach of the Framework Agreement by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Supplier, payment must be made to the sub-contractor without deduction;

21.3.2 notifies the sub-contractor that the Sub-Contract forms part of a larger Framework Agreement for the benefit of the Purchaser and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor, to the Purchaser;

21.3.3 provides the Supplier with a right to terminate the Sub-Contract if the relevant sub-contractor fails to comply in the performance of its Framework Agreement with any legal obligations in the fields of environmental, social or employment law, or if any of the termination events specified in Clause 21.3 occur;

21.3.4 requires the sub-contractor to include provisions having the same effect as Clauses 21.3.1, 21.3.2, and 21.3.3 above in any Sub-Contract it awards; and

21.3.5 in the same terms as that set out in this Clause 21.3 (including for the avoidance of doubt this Clause 21.3.5) subject only to modification to refer to the correct designation of the equivalent party as the Supplier, sub-contractor and sub-sub-contractor as the case may be.

21.3 Suppliers to the Purchaser are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to the Senior Manager (Corporate Procurement), 1st Floor West, Cunninghame House, Irvine KA12 8EE or via email to [procurement@north-ayrshire.gov.uk](mailto:procurement@north-ayrshire.gov.uk).

21.4 Any breach of this Clause 21 by the Supplier is a material breach for the purposes of Clause 31.2 (Termination).

## **22. Change of Name /Contract Novation**

22.1 If the Supplier's company name changes during the term of the Framework Agreement but their company registration remains the same, the Supplier will be required to provide a copy of their "Certificate of Incorporation on Change of Name" at the earliest opportunity.

22.2 Where the company registration number changes the Supplier must inform the Purchaser immediately of any changes.

22.3 Where there is a change to any of the following the Purchaser reserves the right to terminate the Framework Agreement with immediate effect:

- Location of service;
- Management structure;
- Staff providing the service;
- Operational policies and procedures.

22.4 Subject to the above the Purchaser reserves the right to consider continuing the Framework Agreement with the new company provided that the company:

- a. meets any pre-qualification and minimum conditions that were applied when the original Framework Agreement was awarded;
- b. scores at least the same scores for the quality criteria that were applied at the procurement evaluation stage;
- c. signs a Deed of Novation confirming that they accept all contractual obligations and liabilities contained within the Framework Agreement.

## **23. Amendment**

The Framework Agreement may be amended only by the written agreement of both Parties. Accordingly, the Supplier may not unilaterally amend the Framework Agreement.

## **24. Warranties and Representations**

The Supplier warrants and represents that:

24.1.1 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 the Framework Agreement and that the Framework Agreement is executed by a duly authorised representative of the Supplier;

24.1.2 in entering the Framework Agreement it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2015;

24.1.3 it has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committed any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities;

24.1.4 as at the Commencement Date, all information contained in the SPD and Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Purchaser prior to execution of the Framework Agreement;

24.1.5 no claim is being asserted and no litigation, alternative dispute resolution procedure 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 the Framework Agreement;

24.1.6 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 the Framework Agreement;

24.1.7 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 Supplier 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 Supplier's assets or revenue; and

24.1.8 as at the Commencement Date, all insurances that must be effected under the North Ayrshire Council Terms and Conditions for the Purchase of Goods, the Purchase of Services, The Purchase of Goods and related services or Consultancy Services have been effected.

## **25. Indemnity and Insurance**

25.1 Without prejudice to any rights or remedies of the Purchaser, the Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligent or wrongful act or omission of the Supplier.

25.2 Neither Party is liable to the other Party under the Framework Agreement for any:

25.2.1 loss of profits, business, revenue or goodwill; or

25.2.2 indirect or consequential loss or damage.

25.3 But clause 25.2 does not exclude any liability of the Supplier for additional operational, administrative costs or expenses or wasted expenditure resulting from the Default of the Supplier.

25.4 But neither Party excludes or limits liability to the other Party for:

25.4.1 death or personal injury caused by its negligence;

25.4.2 misrepresentation;

25.4.3 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982.

25.5 The Purchaser shall indemnify the Supplier in respect of all claims, proceedings, actions, damages, fines, costs, expenses or other liabilities which may arise out of, or in consequence of, a breach of Data Protection Laws where the Supplier has acted in accordance with the Purchaser's written instructions, notwithstanding the above, nothing within this Framework Agreement relieves the Supplier of any of their own direct responsibilities and liabilities under Data Protection Laws.

25.6 The Supplier and any Sub-Contractor must effect and maintain with a reputable insurance company:

25.6.1 Public liability insurance, to the value of at least ten million pounds (£10,000,000) sterling in respect of any one event and unlimited in the period;

25.6.2 Professional indemnity insurance, to the value of at least five million pounds (£5,000,000) sterling in the aggregate in the policy period;

25.6.3 Employer's liability insurance, to the value of at least five million pounds (£5,000,000) sterling in respect of any one event and unlimited in the period;

25.6.4 Products liability insurance, to the value of at least ten million pounds (£10,000,000) sterling in the aggregate in the policy period;

25.6.5 Third-party motor vehicle insurance maintained throughout the period of the Framework Agreement, in accord with the provisions of the current Road Traffic Act 1988 (as amended). A valid motor vehicle certificate in the Supplier's name, or (where there is no fleet but rather the Supplier permits employees to use their personal vehicles for business purposes), a letter signed by a person of appropriate authority, confirming that the Supplier has ongoing arrangements in place to ensure their employees' vehicles are appropriately insured and maintained.

25.7 Such insurance must be maintained for the duration of the Framework Agreement and for a minimum of 5 years following the expiry or termination of the Framework Agreement.

25.8 The policy or policies of insurance referred to in Clause 25.6 shall be shown to the Purchaser whenever the Purchaser requests, together with satisfactory evidence of payment of premiums, including the latest premium due thereunder.

25.9 The Supplier shall establish a robust internal process to receive and process any insurance claims intimated to it, the detail of which process will be made available to the Purchaser on request.

25.10 In the event that a claim is intimated to the Supplier, the Supplier shall immediately acknowledge receipt of such claim to the claimant, investigate the facts and process the claim with its insurance company to the Purchaser's satisfaction. If required by the Purchaser, the Supplier shall provide any information required on the nature of the claim or the manner in which it is being processed, having in mind that the Purchaser's name cannot be brought into disrepute.

## **26. Dispute Resolution**

26.1 In the event of any dispute arising out of or in connection with the Framework Agreement between the Parties either Party shall serve a notice on the other Party outlining the terms of the dispute. The Parties must attempt in good faith and in a spirit of mutual trust and co-operation to resolve the dispute as a matter of urgency and no later than twenty (20) Working Days of either Party notifying the other of the dispute.

26.2 In the event of any dispute of an emergency nature arising out of or in connection with the Framework Agreement between the Parties the Purchaser shall be entitled to demand that the Supplier attempts in good faith and in a spirit of mutual trust and co-operation to resolve the dispute within any timescale as the Purchaser considers reasonable in the circumstances and the Supplier must comply. The Purchaser shall be the sole judge of what disputes are of an emergency nature.

26.3 Any dispute or difference arising out of or in connection with the Framework Agreement including any question regarding its existence, validity or termination which cannot be resolved in good faith, shall be determined by the appointment of a single arbitrator to be agreed between the Parties, and failing agreement within fourteen (14) days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.

26.4 Any arbitration under Clause 26.3 is subject to the Arbitration (Scotland) Act 2010.



26.5 Nothing in this Clause 26 shall:

26.5.1 prevent the Parties from complying with, observing and performing all their obligations in respect of the Framework Agreement regardless of the nature of any dispute between them arising out of or in connection with the Framework Agreement and notwithstanding the referral of any such matter or dispute for resolution under this Clause; nor

26.5.2 diminish the Parties to the Framework Agreement responsibilities in respect of Framework Agreement administration.

## **27. Severability**

If any provision of the Framework Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision is severed and the remainder of the provisions of the Framework Agreement continue in full force and effect as if the Framework Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

## **28. Waiver and Cumulative Remedies**

28.1 Any failure of either Party to insist upon strict performance of any provision of the Framework Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy does not constitute a waiver of that right or remedy and does not cause a diminution of the obligations established by the Framework Agreement.

28.2 Accordingly, no waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 11 (notices).

28.3 The rights and remedies provided by this Framework Agreement 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.

## **29. Force Majeure**

29.1 If either Party to this Framework Agreement is prevented or delayed in the performance of any of its obligations under this Framework Agreement as a direct result of a Force Majeure Event, and if such Party gives written notice to the other Party specifying the matters constituting the Force Majeure Event together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the Party in question shall be excused the performance or the practical performance as the case may be of such obligations in terms of this Framework Agreement which are so affected as from the date on which it became unable to perform them and for so long as the Force Majeure Event shall continue.

29.2 If the period during which either Party is delayed in or prevented from the performance of its obligations hereunder by reason of a Force Majeure Event exceeds two months, either Party may serve on the other one month's notice of termination of the Framework Agreement.

29.3 Both Parties agree to use their best efforts to ensure that, during any period when a Force Majeure Event exists, the services are provided to the fullest extent practicable.

### **30. Disruption**

30.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Framework Agreement it does not disrupt the operations of the Purchaser, its employees or any other Supplier employed by the Purchaser.

30.2 The Supplier shall immediately inform the Purchaser 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 the Framework Agreement.

30.3 In the event of industrial action by the Staff, the Supplier shall seek approval to its proposals to continue to perform its obligations under the Framework Agreement.

30.4 If the Supplier's proposals referred to in clause 30.3 are considered insufficient or unacceptable by the Purchaser acting reasonably, then the Purchaser may by notice terminate the Framework Agreement with immediate effect.

### **31. Termination**

31.1 The Purchaser may terminate the Supplier's interest in the Framework Agreement by notice to the Supplier with immediate effect, or such later date as the Purchaser may specify, if the Supplier commits a Default and if:

31.1.1 the Supplier has not remedied the Default to the satisfaction of the Purchaser within 20 Working Days, or such other period as may be specified by the Purchaser, after issue of a notice specifying the Default and requesting it to be remedied;

31.1.2 the Default is not in the opinion of the Purchaser, capable of remedy; or

31.1.3 the Default is a material breach of the Framework Agreement.

31.2 The Supplier shall give notice to the Purchaser as soon as reasonably practicable if the Supplier is unable permanently or temporarily to meet any of the conditions of the Framework Agreement, or to observe or perform any of its obligations under the Framework Agreement.

31.2.1 In the event the Supplier gives the Purchaser the notice referred to at Clause 31.2 the Purchaser may terminate the Supplier's interest in the Framework Agreement

by notice to the Supplier with immediate effect, or such later date as the Purchaser may specify.

31.3 The Purchaser may also terminate the Supplier's interest in the Framework Agreement:

31.3.1. in accordance with any provision in the ITT;

31.3.2. in accordance with any provisions of the Call-off Contract Terms for Goods, Services, Goods and Related Services, or Consultancy Services relating to the following activities:

31.3.2.1 entering, attending or occupying the Purchaser's premises;

31.3.2.2 making use of the Purchaser's property or information technology systems, or giving the Purchaser the use of the Supplier's property or information technology systems;

31.3.2.3 having dealings with the Purchaser's employees, suppliers or contractors;

31.3.2.4 soliciting the Purchaser's employees;

31.3.2.5 making representations or giving professional advice to the Purchaser;

31.3.2.6 generating information for or giving information to the Purchaser;

31.3.2.7 receiving information from or holding information on behalf of the Purchaser;  
and

31.3.2.8 carrying out publicity or marketing activities;

31.3.9 where a Call-off Contract with the Supplier under this Framework Agreement has been terminated prior to the termination date of that Call-off Contract.

31.4 The Purchaser may terminate the Framework Agreement if a Call-off Contract is terminated because of a Default by the Supplier.

31.5 The Purchaser may terminate the Framework Agreement in the event that:

(a) the Framework Agreement has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of the Public Contracts (Scotland) Regulations 2015; or

(b) the Supplier has, at the time of Framework Agreement award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of the Public Contracts

(Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure;

(c) the Framework Agreement should not have been awarded to the Supplier in view of a serious infringement of the Purchaser's obligations under The Public Contracts (Scotland) Regulations 2015 as amended by The Public Procurement etc. (Scotland) Amendment (EU Exit) Regulations 2020, Directive 2014/24/EU of the European Parliament, and any statutory modifications thereof; or

(d) the Supplier fails to comply in the performance of the Services with any legal obligations and requirements under all applicable law, including without restriction: environmental law, social law, employment law, the Health and Safety at Work etc. Act 1974, and the Equality Act 2010.

31.6 The Supplier shall notify the Purchaser in writing immediately upon the occurrence of any of the following events:

- (a) where the Supplier is an individual and if a petition is presented for the Supplier's bankruptcy or the sequestration of the Supplier's estate or a criminal bankruptcy order is made against the Supplier, or the Supplier is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator or trustee is appointed to manage the Supplier's affairs; or
- (b) where the Supplier is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Clause occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Supplier to be wound up as an unregistered company; or
- (c) where the Supplier is a company, if the company passes a resolution for windingup of dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a windingup order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager 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.

31.6 On the occurrence of any of the events described in Clause 31.5 or, where the Supplier is an individual if the Supplier shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003, the Purchaser shall be entitled to terminate the Supplier's interest in the Framework Agreement by notice to the Supplier with immediate effect, or at such later date as the Purchaser may specify.

31.7 Notwithstanding any other rights under the Framework Agreement or otherwise in law, either Party may terminate the Supplier's interest in the Framework Agreement by giving to the other Party not less than thirty (30) days' notice in writing to that effect.

### **32. Compliance with Law etc.**

Throughout the duration of the Framework Agreement the Supplier shall be bound and obliged to comply with all applicable law, Good Industry Practice and the standards relevant to the provision of Goods and/or Services (including regulatory bodies). During the period of the Framework Agreement the Supplier shall produce such evidence as the Purchaser may require to satisfy the Purchaser that the Supplier has complied with this Clause.

### **33. Equality**

The Supplier undertakes that it has and shall comply with all statutory requirements in respect of ensuring equal opportunity in employment and has not and shall not unlawfully discriminate either directly or indirectly on such grounds as race, ethnic or national origin, disability, gender, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Acts 2006 and 2010, the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, the Human Rights Act 1998 or other relevant or equivalent legislation, and any statutory modification or re-enactment thereof. The Supplier shall take all reasonable steps to secure the observance of this Clause 33 by all employees and representatives of the Supplier.

### **34. Tax Arrangements**

34.1 Where the Supplier is liable to be taxed in the UK in respect of consideration received under this Framework Agreement, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.

34.2 Where the Supplier is liable to National Insurance Contributions (NICs) in respect of consideration received under this Framework Agreement, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.

34.3 The Purchaser may, at any time during the term of this Framework Agreement, request the Supplier to provide information which demonstrates how the Supplier complies with sub-clauses 34.1 and 34.2 above or why those clauses do not apply to it.

34.4 A request under sub-clause 34.3 above may specify the information which the Supplier must provide and the period within which that information must be provided.

34.5 The Purchaser may supply any information which it receives under clause 34 to the Commissioners of His Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

34.6 The Supplier shall take all reasonable steps to ensure the observance of the provisions of this clause 34 by all Supplier Representative's.

34.7 Where the Supplier enters into any sub-contract with any Supplier Representative, the Supplier must ensure that a provision is included which is in the same terms as this clause 34 subject only to modification to refer to the correct designation of the equivalent party as the Supplier.

### **35. Blacklisting**

35.1 The Supplier must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992. Breach of this Clause is a material Default which shall entitle the Purchaser to terminate the Framework Agreement.

35.2 Suppliers sub-contracting, assigning or novating any part of the Framework Agreement must impose the same conditions on any sub-contractor or party to whom such a part of the Framework Agreement is novated or assigned.

### **36. Conflicts of Interest**

36.1 The Supplier must take appropriate steps to ensure that the Purchaser is not placed in a position where, in the reasonable opinion of the Purchaser, there is an actual or potential conflict between the interests of the Supplier and the duties owed to the Purchaser under the Framework Agreement.

36.2 The Supplier must disclose by notice to the Purchaser full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.

36.3 Breach of this clause by the Purchaser is a material breach for the purposes of clause 31 (Termination).

### **37. Corrupt Gifts or Payments**

The Supplier shall not offer or give, or agree to give, to any employee or representative of the Purchaser any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other Framework Agreement with the Purchaser or for showing or refraining from showing favour or disfavour to any person in

relation to this or any such Framework Agreement. The attention of the Supplier is drawn to the criminal offences created by the Bribery Act 2010.

### **38. Consequence of Expiry or Termination**

38.1 Where the Purchaser terminates the Supplier's interest in the Framework Agreement under clause 31 (Termination) and makes other arrangements for the supply of Goods and/or Services, the Supplier will indemnify the Purchaser against all costs thereof incurred by the Purchaser. The Purchaser shall be entitled to deduct from any amount due to the Supplier the costs thereof incurred by the Purchaser, and if the total cost to the Purchaser exceeds the amount (if any) due to the Supplier, the difference shall be recoverable by the Purchaser from the Supplier.

38.2 The termination of this Framework Agreement in accordance with clause 31 (Termination) or its expiry shall not affect any right of action or remedy which shall have accrued or shall thereupon accrue to either party, and shall not affect the continued operation of Clauses 16 (Audit), 20 (Intellectual Property Rights), and 19 Transfer of Undertakings (Protection of Employment) Regulations 2006.

38.3 Following the service of a termination notice, the Supplier shall continue to perform its obligations in accordance with the provisions of this Framework Agreement until termination.

38.4 On expiry or termination of the Framework Agreement the Supplier must:

38.4.1 immediately return to the Purchaser all Purchaser Property and Purchaser Protected Information in its possession; and

38.4.2 destroy or delete any copies of Purchaser Protected Information (whether physical or electronic) in its possession.

### **39. Counter-Terrorism Prevent Duty**

The Supplier shall throughout the period of the Framework Agreement assist the Purchaser with its statutory obligation under section 26 of the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism, as reasonably required by the Purchaser.

### **40. Governing Law**

This Framework Agreement shall be governed by and construed in accordance with Scottish law and the Supplier hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Purchaser to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or

more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

#### **41. Schedule 1 (Data Protection)**

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

This Schedule includes certain details of the Processing of Personal Data in connection with the Services:

##### **Subject matter and duration of the Processing of Personal Data**

Complete relevant details

##### **The nature and purpose of the Processing of Personal Data**

Complete relevant details

##### **The type of Personal Data to be Processed**

Complete relevant details

##### **The categories of Data Subject to whom Personal Data related**

Complete relevant details

##### **The obligations and rights of the Purchaser**

The obligations and rights of the Purchaser as the Data Controller are set out in Clause 14.