



North Ayrshire Council Terms and Conditions for the Purchase of Services

Contents

1. Definitions	3
2. Interpretations	7
3. Parent Company Guarantee	8
4. Nature of the Contract	8
5. Period	8
6. Specification	8
7. Pricing Schedule	8
8. Ordering Procedures and Management Arrangements	9
9. Supplier's Status	9
10. Notices	9
11. Price	10
12. Payment and Invoicing	10
13. Recovery of Sums Due	11
14. Data Protection	11
15. Public Access to Information	14
16. Confidentiality	14
17. Audit	15
18. Advertising	15
19. Provision of the Services	15
20. Deliverables and Milestones	16

21. Supplier's Personnel	16
22. Transfer of Undertakings (Protection of Employment).....	17
23. Intellectual Property Rights	18
24. Assignment and Sub-Contracting	19
25. Change of Name/Contract Novation.....	20
26. Amendment.....	21
27. Compliance with Law etc.....	21
28. Supplier's Responsibility for Staff	21
29. Security and Access to the Purchaser's Premises	21
30. Supplier's Equipment	22
31. Inspection of the Supplier's Premises and Documentation	23
32. Purchaser Property	23
33. Health & Safety	24
34. Tax Arrangements.....	25
35. Equality	26
36. Blacklisting	26
37. Conflicts of Interest.....	26
38. Corrupt Gifts or Payments.....	26
39. Warranties and Representations	27
40. Indemnity and Insurance	28
41. Force Majeure	30
42. Dispute Resolution	30
43. Severability.....	31
44. Waiver and Cumulative Remedies	31
45. Termination	31
46. Consequence of Expiry or Termination	33
47. Governing Law	33

48. Counter Terrorism Prevent Duty.....	34
49. Schedule 1 (Data Protection)	34

1. Definitions

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

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

“Commencement Date” means the commencement date, as specified in the award letter.

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

“Contract” means any formal Contract entered into between the Supplier and North Ayrshire Council for the supply of the Services. The documents that form part of the Contract include, but are not limited to, the ITT, Quick Quote Project Brief or Single Tender Action documents, the Supplier’s bid, any clarification sought as part of the procurement process, these Terms and Conditions and the award letter.

“Contract Administrator” means the member of the Purchaser’s staff appointed for the purposes of overseeing the Contract, monitoring the performance of the Supplier and ensuring that the standards of service specified in the Contract are delivered. The Contract Administrator and their deputy shall be named at contract award.

“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 Contract, and/or actual or potential loss and/or destruction and/or corruption of Personal Data in breach of the Contract, 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.

“Deliverable” means anything to be delivered by the Supplier to the Purchaser and identified as a deliverable in accordance with the Ordering Procedures.

“Equipment” means equipment, plant, tackle, materials and other items supplied and used by the Supplier and/or the Supplier’s Representatives in the performance of the Supplier’s obligations under the Contract.

“Force Majeure Event” 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, any disaster, epidemic, pandemic, war or civil unrest, nuclear, biological or chemical warfare, or any other disaster, natural or man-made.

“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.

“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 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 Suppliers are 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 Contract in Scotland.

“Management Arrangements” means the arrangements for the strategic management of the relationship between the Parties, including arrangements for monitoring of the Supplier’s compliance with the Specification, the Key Performance Indicators, the Ordering Procedures and these Terms and Conditions.

“Milestone” means any event or task which must be completed by a particular date under the Contract, such as the delivery of a Deliverable, identified as a milestone in accordance with the Ordering Procedures.

“Ordering Procedures” means the procedures for ordering Services set out in the ITT, Quick Quote Project Brief or Single Tender Action documents.

“Party” means the Supplier and the Purchaser respectively.

“Parties” means the Supplier and the Purchaser collectively.

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

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

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

“Premises” means the location where the Services are to be performed, as specified in the Contract.

“Pricing Schedule” means the details of the pricing of the Services as at the Commencement Date set out in the Supplier’s 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 or P-Cards.

“Project Brief” means the invitation bid document associated with a quick quote.

“Purchase Order” means an order for particular Services placed in accordance with the Ordering Procedures.

“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 Property” means any corporeal moveable property issued or made available to the Supplier by the Purchaser in connection with the Contract.

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

“Quick Quote” means a low value procurement exercise progressed by online quotation via PCS-T.

“Services” means the Services as are to be supplied by the Supplier to the Purchaser as set out in the Specification and as may be ordered in accordance with the Ordering Procedures.

“Service Levels” means the Service Levels identified as such in the Specification.

“Single Tender Action” means a procurement exercise progressed without a call for competition, as the circumstance meets an exemption reasons detailed in the Procurement (Scotland) Regulations 2016, Part 3 General Duties, Circumstances in which a contract can be awarded without competition.

“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 Services.

“Sub-Contract” means a Contract between two or more Suppliers, at any stage of remoteness from the Purchaser in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

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

“Supplier” means the person, firm or company to whom the Contract 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 Contract including but not limited to:

- its Staff;
- its agents, suppliers and carriers; and
- any sub-contractors of the Supplier (whether approved under Clause 24 (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 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. Interpretations

2.1 The interpretation and construction of the Contract 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 Contract 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 Contract for ease of reference only and do not affect the interpretation or construction of the Contract.

3. Parent Company Guarantee

It shall be a condition of this Contract that, if required by the Purchaser, the Supplier shall deliver a validly executed parent company guarantee in the form set out in the ITT, Quick Quote Project Brief or Single Tender Action documents. 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 Contract 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 the Purchaser shall have the right to terminate the Contract by notice in writing to the Supplier.

4. Nature of the Contract

4.1 The Contract is a public services contract within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015.

4.2 Save to the extent specifically provided for in this Contract, the Supplier acknowledges that it is not the exclusive Supplier of services to the Purchaser and as such no guarantee of work or volume of work has been granted by the Purchaser.

5. Period

5.1 The period of the Contract is detailed in the ITT, Quick Quote Project Brief or Single Tender Action documents unless it is terminated earlier under the terms of the Contract or extended under Clause 5.2.

5.2 The Purchaser may, by giving notice to the Supplier, extend the period of the Contract to an extension date specified in the ITT, Quick Quote Project Brief or Single Tender Action documents where applicable. Subject to that constraint, the Purchaser may extend the period of the Contract on more than one occasion.

6. Specification

The Supplier must comply with the Specification. In particular, the Supplier must meet or exceed the Service Levels.

7. Pricing Schedule

7.1 The Pricing Schedule sets out details of the pricing of the Services.

7.2 The prices in the Pricing Schedule are either not to be increased or may be varied for the period of the Contract in accordance with the arrangements set out in the PCST Commercial Envelope and the ITT, Quick Quote Project Brief or Single Tender Action documents.

7.3 Accordingly, the Supplier may not unilaterally increase the prices in the Pricing Schedule. But nothing in the Contract prevents the Supplier from improving on the prices in the Pricing Schedule for the purposes of a particular Order.

8. Ordering Procedures and Management Arrangements

8.1 The Ordering Procedures may be invoked by the Purchaser at any time during the period of the Contract.

8.2 The Parties must comply with the Ordering Procedures and Management Arrangements.

8.3 The Supplier must maintain the capacity to supply the Services throughout the period of the Contract.

9. Supplier's Status

At all times during the period of the Contract the Supplier is an independent Supplier and nothing in the Contract establishes a contract of employment, a relationship of agency or partnership or a joint venture between the Parties or between the Purchaser and any Supplier Representative. 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 the Contract.

10. Notices

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

10.2 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:

10.2.1 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;

10.2.2 For the Purchaser – addressed to Senior Manager (Corporate Procurement), 1st Floor West, Cunninghame House, Irvine KA12 8EE or via email to 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.

10.3 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 10.2.

10.4 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 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.

10.5 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.

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

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

10.8 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.

11. Price

11.1 In consideration of the Supplier's performance of its obligations relating to a Purchase Order, the Purchaser must pay:

11.1.1 the price due in accordance with the Pricing Schedule and the Ordering Procedures; and

11.1.2 a sum equal to the value added tax chargeable at the prevailing rate.

11.2 The Supplier may not suspend the provision of services if it considers that the Purchaser has failed to pay the price due.

12. Payment and Invoicing

12.1 The Purchaser must pay all sums due to the Supplier within 30 days of receipt of a valid invoice.

12.2 The Supplier must render invoices monthly in arrears.

12.3 The Supplier must ensure that each invoice contains appropriate Contract and Purchase Order references and a detailed breakdown of the Services provided. The Supplier must supply such other documentation reasonably required by the Purchaser to substantiate any invoice.

12.4 Value added tax, where applicable, must be shown separately on all invoices as a strictly net extra charge.

12.5 Interest is payable on the late payment of any undisputed sums of money in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. In the

case of sums due by the Purchaser, the sums referred to in this clause must be properly invoiced by the Supplier.

12.6 In this Clause 12, 'valid invoice' includes an electronic invoice meeting all the requirements set out in regulation 70A of the Public Contracts (Scotland) Regulations 2015.

12.7 The Purchaser will not be liable to pay for any Services carried out by the Supplier unless it is specified in a Purchase Order.

12.8 The Supplier shall be obliged to accept payment by means of BACS (Banks Automated Clearing Service) or Procurement Card.

13. Recovery of Sums Due

Wherever under this Contract any sum of money is recoverable from or payable by the Supplier, that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under this Contract or under any other agreement or contract between the Supplier and the Purchaser.

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 Contract. 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, Clause 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 Contract 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 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 Contract 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 Contract 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 Contract; 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 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 Contract 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 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 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 the 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 Contract, 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 clause as "the EIRS") or both any information held relating to the Contract. In exercising its obligations under the 2002 Act and 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 and the EIRS and comply with any requests from the Purchaser, for that purpose.

16. Confidentiality

16.1 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 Contract except information which is in the public domain otherwise than by reason of a breach of this Clause.

16.2 All information related to the Contract 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.

16.3 The Supplier shall at all times comply with the Purchaser's "IT and Cyber Security Policy" ("the 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 Policy as well as with any of the Purchaser's related security standards, guidelines and procedures in relation to the Policy. The Policy can be obtained on request by contacting the Purchaser's ICT Security Team by email at cybersecurityteam@north-ayrshire.gov.uk.

16.4 The provisions of this Clause 16 shall apply during the continuance of this Contract and after its termination howsoever arising.

17. Audit

17.1 The Supplier shall keep and maintain until the date falling seven (7) years after the date of expiry of the Contract or any period of extension, or as long a period as may be agreed between the parties, full and accurate records of the Contract including the orders placed, 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 Contract.

17.2 The provisions of this Clause 17 shall apply during the continuance of this Contract and after its termination howsoever arising.

18. Advertising

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

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

18.3 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 Contract, without the prior written consent of the Purchaser.

19. Provision of the Services

19.1 The Supplier must provide the Services:

19.1.1 in accordance with the Specification and the Ordering Procedures;

19.1.2 in accordance with the particular requirements of each Purchase Order; and

19.1.3 to the satisfaction of the Purchaser acting reasonably.

19.2 The Supplier acknowledges that the Purchaser relies on the skill, care, diligence and judgment of the Supplier in the supply of the Services and the performance of its obligations under the Contract.

19.3 For each Purchase Order for the provision of the Services, subject to any contrary requirements of the Purchaser communicated in accordance with the Ordering Procedures, the provisions of Clauses 19 and 20 apply.

19.4 The period for any Purchase Order agreed in accordance with the Ordering Procedures may be brought to an earlier end upon 3 months' written notice by the Purchaser.

20. Deliverables and Milestones

20.1 The Supplier must provide the Services, including any Deliverables:

20.1.1 at the date(s), time(s) and location(s) required by the Purchaser; and

20.1.2 in good time to meet any Milestones required by the Purchaser.

20.2 When the Supplier believes acting reasonably that it has provided any Deliverable or completed any Milestone in accordance with the Contract it must notify the Purchaser.

20.3 The Purchaser may thereafter by notice to the Supplier acting reasonably:

20.3.1 accept the provision of the Deliverable or the completion of the Milestone (as appropriate), having regard to any acceptance criteria communicated in accordance with the Ordering Procedures; or

20.3.2 providing reasons, reject the provision of the Deliverable or the completion of the Milestone.

20.4 Where the Purchaser rejects the completion of a Milestone or provision of a Service or Deliverable in accordance with Clause 20.3.2, the Supplier must at its expense immediately rectify or remedy any defects and/or delays.

20.5 Risk and ownership in any Deliverables that are corporeal movables and in any physical media in which any Deliverables are delivered vests in the Purchaser upon acceptance in accordance with this clause.

20.6 Whether the defect or delay is due to the Purchaser or not, the Supplier shall deploy all additional resources to address the consequences of the default or delay. Where such default or delay is solely due to the Purchaser, any additional costs in respect of the said additional resources shall be agreed between the parties both acting reasonably.

21. Supplier's Personnel

21.1 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 Services provided and the performance of the Contract. The Supplier shall take all reasonable steps to avoid changes of Supplier Representatives performing the Contract and shall provide the Purchaser with one month's written notice and full particulars of any proposed additional or replacement Supplier Representatives.

21.2 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 Contract 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.

21.3 The Supplier shall bear the cost of any notice, instruction or decision of the Purchaser under this Clause 21.

22. Transfer of Undertakings (Protection of Employment)

22.1 The Supplier recognises that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“**TUPE**”) may apply in respect of the Contract, 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 Contract; (b) transfer to another Supplier on the expiry of the Contract.

22.2 During the period of six months preceding the expiry of the Contract or after the Purchaser has given notice to terminate the Contract 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 Contract in particular, but not necessarily restricted to, the following:

- (a) the total number of personnel whose employment with the Supplier is liable to be terminated at the expiry of this Contract but for any operation of law; and
- (b) 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
- (c) information about the other terms and conditions on which the affected Staff are employed, or about where that information can be found; and
- (d) details of pensions entitlements, if any.

22.3 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 contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.

22.4 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.

22.5 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.

22.6 The provisions of this Clause 22 shall apply during the continuance of this Contract and after its termination howsoever arising.

23. Intellectual Property Rights

23.1 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 Contract are hereby assigned to and shall vest in the Purchaser absolutely.

23.2 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.

23.3 Except as may expressly be provided for in the Contract, 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 Contract.

23.4 The Supplier must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under the Contract. 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 23.4.

23.5 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.

23.6 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.

23.7 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.

23.8 The Supplier shall not have the right to use any reports, or other materials referred to in Clause 23.1 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.

23.9 The provisions of this Clause shall apply during the continuance of this Contract and after its termination howsoever arising.

24. Assignment and Sub-Contracting

24.1 The Supplier shall not assign or sub-contract any portion of the Contract without the prior written consent of the Purchaser. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract or these Clauses.

24.2 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.

24.3 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:

24.3.1 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 Services, or any part of the Services, and the sub-contractor's invoice relates to such 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 Contract 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;

24.3.2 notifies the sub-contractor that the Sub-Contract forms part of a larger Contract 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;

24.3.3 provides the Supplier with a right to terminate the Sub-Contract if the relevant sub-contractor fails to comply in the performance of its Contract with any legal obligations in the fields of environmental, social or employment law, or if any of the termination events specified in Clause 24.3 occur;

24.3.4 requires the sub-contractor to include provisions having the same effect as Clauses 24.3.1, 24.3.2, and 24.3.3 above in any Sub-Contract it awards; and

24.3.5 in the same terms as that set out in this Clause 24.3 (including for the avoidance of doubt this Clause 24.3.5) 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.

24.4 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.

24.5 Any breach of this Clause 24 by the Supplier is a material breach for the purposes of Clause 45.1.3 (Termination).

25. Change of Name/Contract Novation

25.1 If the Supplier's company name changes during the Contract 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.

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

25.3 Where there is a change to any of the following the Purchaser reserves the right to terminate the Contract with immediate effect

- Location of service;
- Management structure;
- Staff providing the service;

- Operational policies and procedures.

25.4 Subject to the above the Purchaser reserves the right to consider continuing the Contract with the new company provided that the company:

- (a) meets any pre-qualification and minimum conditions that were applied when the original Contract 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 Contract.

26. Amendment

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

27. Compliance with Law etc.

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

28. Supplier's Responsibility for Staff

28.1 The Supplier is responsible for the acts and omissions of all Supplier Representatives relating to the Contract as though such acts and omissions are the Supplier's own.

28.2 The Supplier must ensure that all Supplier Representatives:

28.2.1 are appropriately experienced, skilled, qualified and trained;

28.2.2 carry out their activities connected with the Contract faithfully and diligently and with all with due skill, care and diligence;

28.2.3 and obey all lawful and reasonable directions of the Purchaser when carrying out activities under the Contract.

29. Security and Access to the Purchaser's Premises

29.1 Any access to, or occupation of, the Purchaser's Premises which the Purchaser may grant the Supplier from time to time is on a non-exclusive licence basis free of charge. The Supplier must use the Purchaser's Premises solely for the purpose of performing its obligations under the Contract and must limit access to the Purchaser's Premises to such individuals as are necessary for that purpose.

29.2 The Supplier must comply with the Purchaser's controls, procedures and policies concerning security and access to the relevant Purchaser's Premises and any such modifications to those controls, procedures and policies or replacement controls, procedures and policies as are notified to the Supplier from time to time.

29.3 The Supplier must notify the Purchaser of any matter or other change in circumstances which might adversely affect future security and access to the Purchaser's Premises.

29.4 At the Purchaser's written request, the Supplier must provide a list of the names and addresses of all persons who may require admission to the Purchaser's Premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Purchaser may reasonably request.

29.5 The Supplier must ensure that any individual Supplier Representative entering the Purchaser's Premises complies with any controls, procedures and policies, if applicable, for obtaining access. The Supplier acknowledges that the Purchaser has the right to deny entry to any individual that does not comply with the Purchaser's controls, procedures, and policies concerning security and access.

29.6 In accordance with the Purchaser's controls, procedures and policies concerning visitor access, entry to the Purchaser's Premises may be granted to individual Supplier Representatives for the purposes of meetings.

29.7 The Purchaser may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Purchaser's Premises any Supplier Representative whose admission or continued presence would, in the opinion of the Purchaser acting reasonably, be undesirable.

29.8 The Purchaser will provide advice and assistance acting reasonably to the Supplier to facilitate the Supplier's compliance with this Clause 29.

29.9 All decisions of the Purchaser under this Clause are final and conclusive.

29.10 Breach of this Clause 29 by the Supplier is a material breach for the purposes of Clause 45.1.3 (Termination).

30. Supplier's Equipment

30.1 The Supplier must provide all Equipment necessary to perform any required activities on the Purchaser's Premises or otherwise necessary for the provision of Services.

30.2 But the Supplier must not, without the Purchaser's approval:

30.2.1 bring Equipment onto the Purchaser's Premises; or

30.2.2 leave Equipment on the Purchaser's Premises.

30.3 Any Equipment brought onto the Purchaser's Premises:

30.3.1 remains the property of the Supplier; and

30.3.2 is at the Supplier's own risk and the Purchaser has no liability for any loss of or damage to the Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Purchaser's Default.

30.4 The Supplier must keep all Equipment brought onto the Purchaser's Premises in a safe, serviceable and clean condition. The Purchaser may at any time require the Supplier to remove from the Purchaser's Premises any Equipment which in the opinion of the Purchaser acting reasonably is either hazardous, noxious or not in accordance with the Contract and substitute proper and suitable Equipment at the Supplier's expense as soon as reasonably practicable.

30.5 On completion of any required activities on the Purchaser's Premises or at the end of a Working Day (as appropriate), the Supplier must at its own expense:

30.5.1 remove all Equipment; and

30.5.2 leave the Premises in a clean, safe and tidy condition, clearing away all rubbish arising out of the Supplier's activities.

30.6 The Supplier is solely responsible for making good any damage to the Purchaser's Premises or any objects contained therein, other than wear and tear, which is caused by the Supplier.

31. Inspection of the Supplier's Premises and Documentation

31.1 Following award of the Contract, the Supplier shall permit representatives of the Purchaser, following the giving of reasonable notice, except in cases of urgency, to have access to the Premises, to inspect the Premises, to ensure that they are fit for the purposes of the Contract, that they comply with the Terms and Conditions of the Contract, all applicable law, Good Industry Practice, and to permit the representatives to carry out external quality audits and assessments of the Supplier.

31.2 Separately, the Supplier is obliged throughout the duration of the Contract to make available on request to the Purchaser all available documentation to substantiate its compliance with the Terms and Conditions of the Contract, all applicable law and Good Industry Practice, or any other requirements of the Contract relating to quality assurance and assessment of the Supplier's performance of its obligations under the Contract.

31.3 Any breach of this Clause 31 by the Supplier is a material breach for the purposes of Clause 45.1.3 (Termination).

32. Purchaser Property

32.1 Notwithstanding Clause 30, the Purchaser may issue Purchaser Property to the Supplier. Where the Purchaser issues Purchaser Property to the Supplier, the Purchaser Property remains at all times the property of the Purchaser.

32.2 The Supplier undertakes the safe custody of the Purchaser Property and to that end must:

32.2.1 keep the Purchaser Property in good order and condition (excluding wear and tear);

32.2.2 comply with any particular security requirements communicated to the Purchaser in relation to the Purchaser Property;

32.2.3 use any Purchaser Property solely in connection with the Contract and for no other purpose; and

32.2.4 store the Purchaser Property separately and ensure that it is clearly identifiable as belonging to the Purchaser.

32.3 The Purchaser Property is deemed for the purposes of clause 32.2.1 to be in good order and condition when received by the Supplier unless the Supplier notifies the Purchaser otherwise within 5 Working Days of receipt.

32.4 The Supplier must not:

32.4.1 modify or replace the Purchaser Property;

32.4.2 use the Purchaser Property as security for a loan or other obligation;

32.4.3 sell, or attempt to sell or part with possession of the Purchaser Property; or

32.4.4 allow anyone to obtain a lien over, or right to retain, the Purchaser Property.

32.5 The Supplier authorises the Purchaser to enter any premises of the Supplier during Working Hours on reasonable notice to recover any Purchaser Property.

32.6 The Supplier undertakes the due return of the Purchaser Property and as such is liable for all loss of, or damage to, the Purchaser Property (excluding wear and tear), unless such loss or damage was caused or contributed to by the Purchaser's Default. The Supplier must notify the Purchaser promptly and, in any event within 2 Working Days, upon becoming aware of any defects appearing in or losses or damage occurring to the Purchaser Property.

33. Health & Safety

33.1 The Supplier shall perform the Contract in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Contract is being performed (whether such persons are in the vicinity of the said place at the time when the Contract is being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in

connection with the performance of the Contract type supplied to the Purchaser, whether specifically or generally. 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 breach of this Clause.

33.2 The Supplier must notify the Purchaser immediately of any risks to health or safety which are identified or arise during the Contract.

33.3 Notwithstanding Clause 29 (Security and Access to the Purchaser's Premises) of this Contract the Supplier shall comply with any health and safety measures implemented by the Purchaser in respect of the Purchaser's premises when accessing and/or occupying the Purchaser's premises, and shall notify the Purchaser immediately of any incident(s) which causes or is likely to cause any personal injury or damage to property when accessing and/or occupying the Purchaser's premises.

33.4 The Supplier shall notify the Purchaser immediately of any health and safety hazards which may exist or arise at the Premises which may affect the Supplier's performance of its duties under the Contract.

33.5 The Supplier shall ensure that its health and safety policy statement (as required by The Health and Safety at Work etc. Act 1974) is made available to the Purchaser on request.

34. Tax Arrangements

34.1 Where the Supplier is liable to be taxed in the UK in respect of consideration received under this contract, 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 contract, 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 contract, request the Supplier to provide information which demonstrates how the Supplier complies with sub-clauses 44.1 and 44.2 above or why those clauses do not apply to it.

34.4 A request under sub-clause 44.3 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. 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 35 by all employees and representatives of the Supplier.

36. Blacklisting

36.1 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 Contract.

36.2 Suppliers sub-contracting, assigning or novating any part of the Contract must impose the same Terms and Conditions on any sub-contractor or party to whom such a part of the Contract is novated or assigned.

37. Conflicts of Interest

37.1 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 Contract.

37.2 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.

37.3 Breach of this clause by the Supplier is a material breach for the purposes of clause 45.1.3 (Termination).

38. 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 Contract with the Purchaser or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The attention of the Supplier is drawn to the criminal offences created by the Bribery Act 2010.

39. Warranties and Representations

The Supplier warrants and represents that:

39.1 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 Contract and that the Contract is executed by a duly authorised individual;

39.2 in entering the Contract 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;

39.3 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;

39.4 as at the Commencement Date, all information contained in the SPD, Quick Quote prequalification document, Single Tender Action documents 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 Contract;

39.5 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 Contract;

39.6 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 Contract;

39.7 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;

39.8 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

39.9 in the 3 years prior to the Commencement Date:

39.9.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

39.9.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;

39.10 it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;

39.11 it has made appropriate inquiries (for example as regards the Purchaser's premises) so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract;

39.12 it has in place appropriate technical and organisational measures to safeguard any Purchaser Protected Information provided by the Purchaser;

39.13 there are no actual or potential conflicts between the interests of the Supplier and the duties owed to the Purchaser under the Contract, save as may have been specifically disclosed in writing to the Purchaser prior to execution of the Contract; and

39.14 it is deemed to have inspected any premises at which the services are to be performed as set out in the Specification before tendering so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and the Premises.

40. Indemnity and Insurance

40.1 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.

40.2 Neither Party is liable to the other Party under the Contract for any:

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

40.2.2 indirect or consequential loss or damage.

40.3 But Clause 40.2 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.

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

40.4.1 death or personal injury caused by its negligence;

40.4.2 misrepresentation;

40.4.3 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.

40.5 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 Contract relieves the Supplier of any of their own direct responsibilities and liabilities under Data Protection Laws.

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

40.6.1 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;

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

40.6.3 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;

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

40.6.5 Third-party motor vehicle insurance maintained throughout the period of the Contract, 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.

40.7 Such insurance must be maintained for the duration of the Contract and for a minimum of 5 years following the expiry or termination of the Contract.

40.8 The policy or policies of insurance referred to in Clause 40.6 shall be shown to the Purchaser whenever the Purchaser requests, together with satisfactory evidence of payment of premiums, including the latest premium due thereunder.

40.9 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.

40.10 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.

41. Force Majeure

41.1 If either Party to this Contract is prevented or delayed in the performance of any of its obligations under this Contract 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 Contract 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.

41.2 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 Contract.

41.3 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.

42. Dispute Resolution

42.1 In the event of any dispute arising out of or in connection with the Contract 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 20 Working Days of either Party notifying the other of the dispute.

42.2 In the event of any dispute of an emergency nature arising out of or in connection with the Contract 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.

42.3 Any dispute or difference arising out of or in connection with the Contract, 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 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.

42.4 Any arbitration under Clause 42.3 is subject to the Arbitration (Scotland) Act 2010.

42.5 Nothing in this Clause 42 shall:

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

42.5.2 diminish the Parties to the Contract's responsibilities in respect of contract administration.

43. Severability

If any provision of the Contract 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 Contract continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

44. Waiver and Cumulative Remedies

44.1 Any failure of either Party to insist upon strict performance of any provision of the Contract, 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 Contract.

44.2 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 10 (notices).

44.3 A waiver of any Default is not a waiver of any subsequent Default.

44.4 The rights and remedies provided by the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy is not to be deemed an election of such remedy to the exclusion of other remedies.

45. Termination

45.1 The Purchaser may terminate the Contract by notice to the Supplier with immediate effect, or at such later date as the Purchaser may specify, if the Supplier commits a Default and if:

45.1.1 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; or

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

45.1.3 the Default is a material breach of the Contract.

45.2 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 Contract, or to observe or perform any of its obligations under the Contract.

45.2.1 In the event the Supplier gives the Purchaser the notice referred to at Clause 45.2 the Purchaser may terminate the Contract by notice to the Supplier with immediate effect, or such later date as the Purchaser may specify.

45.3 The Purchaser may also terminate the Contract in accordance with any provision in the Specification, ITT, Quick Quote Project Brief or Single Tender Action Documents.

45.4 The Purchaser may terminate the Contract with immediate effect by notice, or at such later date as the Purchaser may specify, in the event that:

45.4.1 the Contract 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

45.4.2 the Supplier has, at the time of Contract 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; or

45.4.3 the Contract 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

45.4.4 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.

45.5 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 assignation 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.

45.6 On the occurrence of any of the events described in Clause 45.5 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 this Contract by notice to the Supplier with immediate effect, or at such later date as the Purchaser may specify.

45.7 Notwithstanding any other rights under the Contract or otherwise in law, either Party may terminate this Contract by giving to the other Party not less than thirty (30) days' notice in writing to that effect.

46. Consequence of Expiry or Termination

46.1 Where the Purchaser terminates the Contract under Clause 45 (Termination), the Purchaser may make other arrangements for the completion of the Services, and the Supplier shall 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.

46.2 The termination of this Contract in accordance with Clause 45 (Termination) or its expiry shall not affect any right of action or remedy which shall have accrued or shall thereupon accrue to of either party and shall not affect the continued operation of Clauses 17 (Audit), 23 (Intellectual Property Rights), and 22 (Transfer of Undertakings (Protection and Employment)).

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

46.4 On expiry or termination of the Contract the Supplier must:

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

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

47. Governing Law

This Contract 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.

48. Counter Terrorism Prevent Duty

The Supplier shall throughout the period of the Contract 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.

49. 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

The subject matter and duration of the Processing of Personal Data are

The nature and purpose of the Processing of Personal Data

The type of Personal Data to be Processed

The categories of Data Subject to whom Personal Data related

The obligations and rights of the Purchaser

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