

**NORTH AYRSHIRE COUNCIL TERMS AND CONDITIONS 3 (NAC TC3)
CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES
(other than Works Consultancies)**

These Conditions may only be varied with the written agreement of the Client. No terms or conditions put forward at any time by the Consultant shall form any part of the Contract unless specifically agreed in writing by the Client.

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1. DEFINITIONS

In these Conditions:

'Client' means the North Ayrshire Council;

'Consultant' means the person, firm or company to whom the Contract is issued;

'Contract' means the contract between the Client and the Consultant consisting of the Purchase Order, these Conditions and any other documents (or parts thereof) specified in the Contract or Purchase Order;

"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 (i) the GDPR and any applicable national implementing Laws as amended from time to time; and 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 process of Personal Data to which either Party is subject including the Data Protection Act 2018 and any statutory modifications or re-enactments thereof.

"GDPR" means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

"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 Consultant;

'Project' means the services to be provided as specified in the Contract or Purchase Order;

'Premises' means the location where the Project is to be performed, as specified in the Contract or Purchase Order;

"Processing" has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly;

'Purchase Order' means the document setting out the Client's requirements for the Contract.

'Supervisory Authority' has the meaning given in the Data Protection Laws; and

2. THE PROJECT

2.1 The Consultant shall complete the Project with reasonable skill, care and diligence in accordance with the Contract.

2.2 The Consultant shall provide the Client with such reports of his work on the Project at such intervals in such form as the Client may from time to time require.

2.3 The Client reserves the right by notice to the Consultant to modify the Client's requirements in relation to the Project and any alteration to the Contract fee or the completion date arising by reason of such modification shall be agreed between the parties. Failing agreement the matter shall be determined by arbitration in accordance with the provisions of Condition 22 (Dispute Resolution).

3. CONSULTANT'S PERSONNEL

3.1 The Consultant shall make available for the purposes of the Project any individuals named on the Contract or Purchase Order as key personnel. The Consultant shall provide the Client with a list of the names and addresses of all others regarded by the Consultant as key personnel and, if and when instructed by the Client, all other persons who may at any time be concerned with the Project or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as the Client may reasonably require. The Client may at any time by notice to the Consultant designate any person concerned with the Project or any part of it as a key person. The Consultant shall not without the prior written approval of the Client make any changes in the key personnel referred to in this paragraph.

3.2 The Consultant shall take the steps reasonably required by the Client, to prevent unauthorised persons being admitted to the Premises. If the Client gives the Consultant notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the Project, the Consultant shall take all reasonable steps to comply with such notice.

3.3 The decision of the Client shall be final and conclusive as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the Project or as to the designation or approval of key personnel and as to whether the Consultant has furnished the information or taken the steps required of the Consultant by this Condition.

3.4 The Consultant shall bear the cost of any notice, instruction or decision of the Client under this Condition.

4. SECURITY AND ACCESS TO THE CLIENT'S PREMISES

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

4.2 The Consultant must comply with the Client's policies concerning security and access to the Client's premises and such modifications to those policies or replacement policies as are notified to the Consultant from time to time.

4.3 The Consultant must notify the Client of any matter or other change in circumstances which might adversely affect future security and access to the Client's premises.

4.4 At the Client's written request, the Consultant must provide a list of the names and addresses of all persons who may require admission to the Client'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 Client may reasonably request.

4.5 The Consultant must ensure that any individual Consultant Representative entering the Client's premises has completed the process for obtaining if applicable for obtaining access. The Consultant acknowledges that the Client has the right to deny entry to any individual that has not completed the process for obtaining access.

4.6 In accordance with the Client's policies concerning visitor access, entry to the Client's premises may be granted to individual Consultant Representatives for the purposes of meetings, notwithstanding that the process for obtaining if applicable, for access has not commenced or completed.

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

4.8 The Client must provide advice and assistance acting reasonably to the Consultant to facilitate the Consultant's compliance with this clause.

4.9 All decisions of the Client under this clause are final and conclusive.

4.10 Breach of this clause by the Consultant is a material breach for the purposes of condition 15.2 (Termination).

In this Condition 4 the following terms have the meanings given to them below:

'Consultant Representatives' means all persons engaged by the Consultant in the performance of its obligations under the Contract including:

- its employees and workers (including persons employed by a third party but working for and under the control of the Consultant);
- its agents, Consultants and carriers; and
- any sub-contractors of the Consultant (whether approved under Condition 18 (Assignment and sub-contracting) or otherwise).'

5. CHANGE TO CONTRACT REQUIREMENTS

5.1 The Client may order any variation to any part of the Services that for any other reason shall in the Client's opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Services and changes in quality, form, character, kind, timing, method or sequence of the Services.

5.2 Save as otherwise provided herein, no variation of the Services as provided for in condition 5.1 hereof shall be valid unless given or confirmed in the form of an order given by the Client. All such orders shall be given in writing provided that if for any reason the Client shall find it necessary to give any such order orally in the first instance

the Contractor shall comply with such oral order which must be confirmed in writing by the Client within 2 working days of the giving of such oral order by the Client, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.

5.3 Where any such variation of the Services made in accordance with conditions 5.1 and 5.2 has affected or may affect the costs incurred by the Consultant in providing the Services, the Consultant will notify the Client in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Client, who shall take all of the facts into account (including such information as may be provided by the Consultant in respect of the effect which such variation has had or may have on the costs incurred by the Consultant in providing the service) and may authorise such alteration to the sums to be paid to the Consultant in accordance with the provisions of the Contract as are, in the Client's opinion, appropriate and reasonable in the circumstances.

6. FEES AND EXPENSES

6.1 The Client shall pay to the Consultant fees and expenses at the rate specified in the Contract or Purchase Order.

6.2 The Consultant shall be entitled to be reimbursed by the Client only for expenses reasonably and properly incurred by the Consultant in the performance of the duties hereunder, subject to production of such evidence thereof as the Client may reasonably require.

6.3 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Client.

6.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

6.5 Notwithstanding Condition 18 (Assignment and sub-contracting) of this Contract the Consultant may assign to another person (an "assignee") the right to receive payment of the fees or expenses or any part thereof due to the Consultant under this Contract subject to (i) deduction of sums in respect of which the Client exercises its right of recovery under Condition 17 (Recovery of sums due) of this Contract and (ii) all the related rights of the Client under this Contract in relation to the recovery of sums due but unpaid. The Consultant shall notify or procure that any assignee notifies the Client of any variations to the arrangements for payment of the fees and expenses or for handling invoices, in each case in good time to enable the Client to redirect payments or invoices accordingly. In the absence of such notification the Client shall be under no obligation to vary the Client's arrangements for payment of the fees or expenses or for handling invoices.

7. AUDIT

The Consultant shall keep and maintain until 5 years after the Contract has been completed records to the satisfaction of the Client of all expenditures which are reimbursable by the Client and of the hours worked and costs incurred by the Consultant or in connection with any employees of the Consultant paid for by the Client on a time charge basis. The Consultant shall on request afford the Client or the Client's representatives such access to those records as may be required by the Client in connection with the Contract.

8. CORRUPT GIFTS OR PAYMENTS

The Consultant shall not offer or give or agree to give, to any member, employee or representative of the Client 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 Client 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 Consultant is drawn to the criminal offences created by the Bribery Act 2010.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 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 Consultant on behalf of the Client for use, or intended use, in relation to the performance by the Consultant of its obligations under the Contract are hereby assigned to and shall vest in the Client absolutely.

9.2 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.

9.3 The Consultant must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under the Contract. The Consultant shall indemnify the Client against all actions, claims, demands, losses, charges, costs and expenses which the Consultant may suffer or incur as a result of or in connection with any breach of this Condition 14.3.

10. INDEMNITIES AND INSURANCE

10.1 Without prejudice to any rights or remedies of the Client the Consultant shall indemnify the Client against all actions, suits, claims, demands, losses, charges, costs and expenses which the Client 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 Consultant.

10.2 Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Consultant (in respect of which the indemnity in Condition 10.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Client or any agent) the indemnity contained in Condition 10.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Client.

10.3 The Client shall indemnify the Consultant 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 Consultant has acted in accordance with the Client's written instructions, notwithstanding the above, nothing within this contract relieves the Consultant of any of their own direct responsibilities and liabilities under Data Protection Laws.

10.4 The Consultant shall have in force and shall require any sub-Contractor to have in force:

(a) employer's liability insurance in accordance with any legal requirements for the time being in force, and

(b) public liability insurance for such sum and range of cover as the Consultant deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £1 million for any one incident and unlimited in total, unless otherwise agreed by the Client in writing.

10.5 The policy or policies of insurance referred to in Condition 10.4 shall be shown to the Client whenever the Client requests, together with satisfactory evidence of payment of premiums, including the latest premium due thereunder.

10.6 The Consultant 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 Client on request.

10.7 In the event that a claim is intimated to the Consultant, the Consultant shall immediately acknowledge receipt of such claim to the claimant, investigate the facts and process the claim with its insurance company to the Client's satisfaction. If required by the Client, the Consultant 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 Client's name cannot be brought into disrepute.

11. DISCRIMINATION

The Consultant must not unlawfully discriminate against any person within the meaning of the Equality Act 2010 in its activities relating to the Contract or any other contract with the Client.

12. BLACKLISTING

The Consultant 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, or commit any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Client to terminate the Contract.

13. CONFIDENTIALITY

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

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

13.3 The provisions of this Condition 13 shall apply during the continuance of this Contract 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 Consultant 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 Consultant acts as the Data Processor and the Client 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 Legislation 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 Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this Condition 14 are without prejudice to any obligations and duties imposed directly on the Consultant under Data Protection Laws and the Consultant hereby agrees to comply with those obligations and duties.
- 14.5 The Consultant will, in conjunction with the Client 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 Consultant will provide the Client 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 Consultant 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 Client (which may be specific or of a general nature, including with regard to transfers of Personal Data outside the European Economic Area) unless required to do so by European Union or Member state law or Regulatory Body to which the Consultant is subject; in which case the Consultant must inform the Client of that legal requirement before processing unless prohibited by that law the Personal Data only to the extent, and in such manner as is necessary for the performance of the Consultant's obligations under this Contract or as is required by the Law;
- 14.7.3 subject to Condition 14.7.2 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Client'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 Consultant Personnel who have access to the Personal Data and ensure that the Consultant Personnel:

- (a) are aware of and comply with the Consultant's duties under this Condition;
- (b) are subject to appropriate confidentiality undertakings with the Consultant 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 Client 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 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 Consultant shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Client. In the case of general written authorisation, the Consultant must inform the Client of any intended changes concerning the addition or replacement of any other sub-contractor and give the Client an opportunity to object to such changes.

14.9 If the Consultant engages a sub-contractor for carrying out Processing activities on behalf of the Client, the Consultant must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Consultant shall remain fully liable to the Client for the performance of the sub-contractor's performance of the obligations.

14.10 The Consultant must provide to the Client reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23, 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 Data as soon as is possible but in any event within 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 Consultant must assist the Client in complying with the Client'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 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 Personal Data breach to the Client without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
- (c) assisting the Client with communication of a personal data breach to a Data Subject;
- (d) supporting the Client with preparation of a data protection impact assessment;
- (e) supporting the Client with regard to prior consultation of the Supervisory Authority.

14.12 At the end of the provision of Services relating to processing the Consultant must, on written instruction of the Client, delete or return to the Client all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.

14.13 The Consultant must:

- (a) provide such information as is necessary to enable the Client to satisfy itself of the Consultant's compliance with this Condition 14;
- (b) allow the Client, 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 Condition 14 and contribute as is reasonable to those audits and inspections;
- (c) inform the Client if in its opinion an instruction from the Client 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 Condition 14.13 (b) with minimum disruption to the Consultant's day to day business.

14.15 The Consultant 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 Client containing the information set out in Article 30(2) of the GDPR.

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

15 TERMINATION

15.1 The Consultant shall notify the Client in writing immediately upon the occurrence of any of the following events:

(a) where the Consultant is an individual and if a petition is presented for the Consultant's bankruptcy or the sequestration of the Consultant's estate or a criminal bankruptcy order is made against the Consultant, or the Consultant 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 Consultant's affairs; or

(b) where the Consultant 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 Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Consultant to be wound up as an unregistered company; or

(c) where the Consultant is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up 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.

15.2 On the occurrence of any of the events described in paragraph 15.1, or if the Consultant shall have committed a material breach of this contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 7 days of being required by the Client in writing to do so, or, where the Consultant is an individual, if the Consultant 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 Client shall be entitled to terminate this Contract by notice to the Consultant with immediate effect.

15.3 The Client may terminate the Contract in the event that:

(a) 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;

(b) the Consultant 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

(c) the Contract should not have been awarded to the Consultant in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

In this Condition, 'the Treaties' has the meaning given in the European Communities Act 1972.

15.4 The Client may also terminate the Contract in the event of a failure by the Consultant to comply in the performance of the Contract with legal obligations in the fields of environmental, social and employment law.

15.5 In addition to his rights of termination under paragraph 15.2, 15.3 or 15.4, the Client shall be entitled to terminate this Contract by giving to the Consultant not less than 7 days' notice to that effect. In the event of such termination, the Consultant shall, if required to do so by the Client, prepare and submit to the Client a report on the work done prior to the termination and making such recommendations as may be based on the work done prior to termination.

15.6 Termination under paragraphs 15.2, 15.3, 15.4 or 15.5 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Client and shall not affect the continued operation of Conditions 7 (Audit), 9 (Intellectual Property Rights).

16. RETURN OF DOCUMENTS

16.1 Upon termination of the contract the Consultant must on written instruction of the client destroy or return any document, paper, material or information supplied by or obtained from the Client in connection with the Contract, or extracted from such documents, papers, materials, data or information unless it is personal data that requires to be stored in term of paragraph 14.10

16.2 Where the Contract has been terminated pursuant to paragraph 15.5, the Consultant may retain any documents papers, materials or information which shall be required by the Consultant to prepare any report required under that paragraph. Promptly upon submission of the report to the Client, the Consultant must on written instruction of the client destroy or return any documents, papers, materials, data or information which the consultant may have retained in terms of this paragraph.

17. RECOVERY OF SUMS DUE

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

18. ASSIGNATION AND SUB-CONTRACTING

18.1 The Consultant shall not assign or sub-contract any portion of the Contract without the prior written consent of the Client. Sub-contracting any part of the Contract shall not relieve the Consultant of any obligation or duty attributable to the Consultant under the Contract or these Conditions.

18.2 Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Consultant to the Client immediately it is issued.

18.3 Where the Consultant enters into a sub-contract must ensure that a provision is included which:

18.3.1 requires payment to be made of all sums due by the Consultant 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 Client has made payment to the Consultant in respect

of 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 Consultant is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Consultant, payment must be made to the sub-contractor without deduction;

18.3.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Client 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 Client; and

18.3.3 in the same terms as that set out in this condition 18.3 (including for the avoidance of doubt this condition 18.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Consultant and sub-contractor as the case may be.

18.4 The Consultant shall also include in every sub-contract:

18.4.1 a right for the Consultant to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in condition 15.3 occur; and

18.4.2 a requirement that the sub-contractor includes a provision having the same effect as 18.4.1 in any sub-contract which it awards.

In this condition 18.4, 'sub-contract' means a contract between two or more contractors, at any stage of remoteness from the Client 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.

19. NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Contract or Purchase Order, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

20. STATUS OF CONTRACT

Nothing in the Contract shall have the effect of making the Consultant the agent of the Client.

21. COMPLIANCE WITH THE LAW ETC.

In providing the services and otherwise when performing the Contract, the Consultant must comply in all respects with:

- 21.1 all applicable law;
- 21.2 any applicable requirements of regulatory bodies; and
- 21.3 Good Industry Practice.

In this condition, '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 Contractor under the same or similar circumstances.

22. DISPUTE RESOLUTION

22.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.

22.2 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.

22.3 Any arbitration under 22.2 is subject to the Arbitration (Scotland) Act 2010.

23. HEADINGS

The headings to Conditions shall not affect their interpretation.

24. GOVERNING LAW

These Conditions shall be governed by and construed in accordance with Scots law and the Consultant 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 Client to take proceedings against the Consultant 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.

25. FORCE MAJEURE

If either Party to this Contract is prevented or delayed in the performance of any of its obligations under this Contract by force majeure, and if such Party gives written notice to the other party specifying the matters constituting force majeure 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 cause of prevention or delay shall continue.

If the period during which either Party is delayed in or prevented from the performance of its obligations hereunder by reason of force majeure exceeds two months either Party may serve on the other one month's notice of termination of the Contract.

Both Parties agree to use their best efforts to ensure that during any period when force majeure circumstances exist that, services are provided to the fullest extent practicable.

For the purposes of the Contract “force majeure” shall be any cause affecting the performance of this Contract arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of either Party to perform.

SCHEDULE 1 (Data Protection)

Data Processing provision as required by Article 28(3) 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 [insert description here].

The nature and purpose of the Processing of Personal Data [Include description here]

The type of Personal Data to be Processed [Include list of data types here]

The categories of Data Subject to whom Personal Data relates [Include categories of data subjects here]

The obligations and rights of the Client

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

SUPPLEMENTARY NOTICE**LATE PAYMENT OF INVOICES**

Consultants to North Ayrshire Council 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 Corporate Procurement Manager, 2nd Floor East, Cunninghame House, Irvine, KA12 8EE Telephone 01292 324097. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Consultants' legal rights.

THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT